

Senate Bill No. 80

(By Senator Yost)

[Introduced January 14, 2015; referred to the Committee on Labor; and then to the Committee on
the Judiciary.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
designated §29-6A-1, §29-6A-2, §29-6A-3, §29-6A-4, §29-6A-5, §29-6A-6, §29-6A-7,
§29-6A-8, §29-6A-9, §29-6A-10, §29-6A-11, §29-6A-12, §29-6A-13, §29-6A-14,
§29-6A-15, §29-6A-16, §29-6A-17, §29-6A-18, §29-6A-19, §29-6A-20, §29-6A-21,
§29-6A-22, §29-6A-23 and §29-6A-24, all relating to promoting orderly and constructive
employment relations between the state and its employees; increasing efficiency of the state;
ensuring health and safety of citizens of this state; requiring state to recognize, negotiate and
bargain with employee organizations representing state employees and to enter into written
agreements evidencing result of bargaining; and encouraging labor peace through
establishment of standards and procedures which protect the rights of the state, the state’s
employees and citizens of this state.

Be it enacted by the Legislature of West Virginia:

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

6 **ARTICLE 6A. STATE LABOR RELATIONS ACT.**

7 **§29-6A-1. Legislative purpose.**

8 The Legislature of the State of West Virginia declares that the trial meet and consult process
9 between state departments and employee representatives has improved organizational efficiency,
10 enhanced the quality of work life, and led to harmonious relations between employees and state
11 managers. In order to build upon this success, it is the public policy of this state and the purpose of
12 the Legislature in the enactment of this article to promote orderly and constructive employment
13 relations between the state and its employees; to increase the efficiency of the state; and to ensure
14 the health and safety of the citizens of this state. The Legislature has determined that these policies
15 and, purposes may best be accomplished by: (1) Granting to state employees the right to associate
16 with others in organizing and choosing representatives for the purpose of collective bargaining; (2)
17 requiring the state to recognize, negotiate and bargain with employee organizations representing state
18 employees and to enter into written agreements evidencing the result of bargaining; and (3)
19 encouraging labor peace through the establishment of standards and procedures which protect the
20 rights of the state, the state employee and the citizens of this state.

21 **§29-6A-2. Short title.**

1 This article shall be known and may be cited as the "State Labor Relations Act."

2 **§29-6A-3. Definitions.**

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

5 (a) "Appropriate bargaining unit" means the unit of employees appropriate for the purpose
6 of collective bargaining pursuant to section twelve of this article.

7 (b) "Arbitration" means the procedure by which an impartial third party holds a hearing, takes
8 testimony and renders a decision which is binding upon the parties for the purpose of resolving a
9 dispute between state employees and the state employers including:

10 (1) "Grievance arbitration" which means arbitration of disputes arising over the interpretation
11 or application of a collective bargaining agreement or any law, rule or regulation affecting the
12 working conditions of state employees; and

13 (2) "Interest arbitration" which means arbitration of disputes arising during the course of
14 contract negotiations resulting in incorporation of the arbitrator's decision into the collective
15 bargaining agreement.

16 (c) "Board" means the State Labor Relations Board created pursuant to section four of this
17 article.

18 (d) "Certification" means official designation by the State Labor Relations Board that the
19 employee organization is the exclusive representative for all the employees in an appropriate
20 bargaining unit for the purpose of collective bargaining.

21 (e) "Collective bargaining" means the performance of the mutual obligations of the state as

1 an employer and the exclusive representative to meet at reasonable times and places, to confer and
2 negotiate in good faith with the intent of reaching agreement, and to execute a written agreement
3 with respect to wages, hours and other terms and conditions of employment: *Provided*, That neither
4 party shall be required to make a concession or compelled to agree to a proposal put forth by the
5 other party except as pursuant to interest arbitration.

6 (f) "Confidential employee" means an employee who acts in a confidential capacity with
7 respect to an individual who formulates or effectuates management policies in the field of
8 labor-management relations;

9 (g) "Employee" means, for the purposes of this article, any person employed by the state in
10 an executive department, including agencies and boards, or in an independent agency or department
11 other than supervisors, confidential employees, persons employed by the governing boards of higher
12 education, employees of the State Legislature, employees of the judicial branch and employees
13 responsible for administering this statute.

14 (h) "Employee organization" means an employee participating organization which exists for
15 the purpose of representing state employees in dealing with the state concerning grievances, labor
16 disputes, wages, hours and other terms and conditions of employment of state employees.

17 (i) "Employer" means the State of West Virginia, its executive departments, divisions,
18 institutions, agencies and boards excluding the board of higher education.

19 (j) "Exclusive representative" means the employee organization which has the right as
20 certified by the board to be the collective bargaining agent of all employees in an appropriate
21 bargaining unit.

1 (k) "Impasse" means the point in the process of negotiations between exclusive
2 representatives of state employees and state employers at which either party determines that no
3 further progress toward resolving differences and concluding a collective bargaining agreement can
4 be made.

5 (l) "Mediation" means assistance in the form of interpretation, suggestion or advice by an
6 impartial third party in reconciling an impasse between the state employer and the exclusive
7 representative regarding wages, hours and other terms and conditions of employment.

8 (m) "Representation fee" means the assessment levied upon employees in an appropriate
9 bargaining unit who are not members of the employee organization to help defray the cost of
10 representational services rendered by the exclusive representative on their behalf.

11 (n) "Supervisory employee" means any individual whose principal activity includes and who
12 spends a preponderance of his or her workday exercising nonroutine and nonclerical authority and
13 who uses independent judgment to hire, transfer, suspend, lay off, recall, promote, discharge, assign,
14 reward or discipline other employees or an individual who has the responsibility to assign work,
15 direct other employees, adjust employee grievances, or an individual who recommends any of these
16 employee actions and whose duties are substantially distinct from these other employees.

17 **§29-6A-4. West Virginia State Labor Relations Board created.**

18 There is hereby created a state agency to be known as the West Virginia State Labor
19 Relations Board, or "board," which shall be administratively attached to the Department of
20 Administration: *Provided*, That the Department of Administration shall not exercise any authority
21 over the policy decisions of the board.

1 **§29-6A-5. Composition of board; terms of members; qualifications of members.**

2 (a) The board shall consist of three members, each of whom shall be appointed by the
3 Governor, and one of whom shall be appointed by the Governor from a list of at least three
4 individuals provided by the largest labor organization in the state. All members shall be citizens of
5 the state, and shall be appointed by and with the advice and consent of the Senate. The members
6 shall be appointed for terms of four years, except that one of the original terms shall be for a term
7 of four years, another one of the original terms shall be for a term of three years and the remaining
8 original term shall be for a term of two years.

9 (b) No person may be eligible for appointment to membership on the board who is the holder
10 of any public office or public employment under the federal government or under the government
11 of this state or any of its political subdivisions, or an appointee or employee of the board. Not more
12 than two members of the board may be members of the same political party.

13 **§29-6A-6. Original term of members; vacancies; eligibility for reappointment; oath of office;**
14 **removal from office.**

15 (a) The Governor shall appoint the three members of the board within sixty days of the
16 effective date of this article. The original terms of office of members begin on July 1, 2015.

17 (b) The Governor shall appoint a member by and with the advice and consent of the Senate
18 to fill any vacancy among the members of the board. The member appointed to fill the vacancy shall
19 serve for the unexpired term of the vacating member.

20 (c) All members of the board shall be eligible for reappointment. Before exercising any
21 authority or performing any duties as a member of the board, each member shall qualify by taking

1 and subscribing to the oath of office prescribed by Section five, Article IV of the State Constitution.

2 (d) No member of the board may be removed from office by the Governor except for official
3 misconduct, incompetence, neglect of duty or gross immorality and only in the manner prescribed
4 by law for the removal of state elective officers.

5 **§29-6A-7. Meetings; quorum; per diem and expenses of members.**

6 (a) The board shall hold at least four meetings in every fiscal year beginning July 1 and
7 ending the following June 30. One meeting, known as the annual meeting, shall be held in July, or
8 as soon thereafter as practicable, in the year 2015 and in July of each subsequent year. Annual
9 meetings, as well as the three additional required meetings in each fiscal year, shall be held on dates
10 and at places as the board may prescribe. In addition to the statutorily required meetings, the board
11 may, upon its own resolution or at the call of the chairperson of the board, meet at other times.

12 (b) Of the three appointed members, two members of the board shall constitute a quorum
13 provided that if there are two vacancies on the board, the remaining member shall be considered as
14 the chair and shall be authorized to conduct the business of the board. A majority vote is necessary
15 to pass upon matters before the board. A vacancy in the board does not impair the authority of the
16 remaining members to exercise all the powers of the board consistent with the existence of a quorum.
17 The Governor may appoint an acting member of the board during the temporary absence from the
18 state or during the illness of any regular member. An acting member, during his or her term of
19 service, shall have the same powers and duties as the regular member and shall meet the same
20 requirements for selection.

21 (c) The members of the board shall be paid \$300 per diem, or such other amount as specified

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

5 **§29-6A-8. Organization of board; staff; offices.**

6 (a) At its first annual meeting in July, or as soon thereafter as practicable, in the year 2015,
7 and annually thereafter, the board shall elect a chairperson and other officers from its membership
8 as the board may deem necessary or desirable. The chairperson shall serve for a one year term
9 commencing on July 1, following the annual meeting and ending on June 30 the following year.

10 (b) The board shall employ an executive officer and other professional, administrative,
11 clerical and other employees, including, but not limited to, mediators and hearing officers, as may
12 be necessary to assist the board in the performance of its duties and responsibilities and consistent
13 with legislative appropriations. The board shall be represented in any judicial proceedings pursuant
14 to this article by the Attorney General of the State of West Virginia or his or her designee. The board
15 shall prescribe the duties and fix the compensation and emoluments of all employees. Employees
16 of the board shall serve under the direction and control of the board or its designated representatives.
17 The board shall provide suitable offices for the executive officer and his or her staff in or near the
18 State Capitol Complex in Charleston, West Virginia.

19 **§29-6A-9. Rules.**

20 The board has authority from time to time to make, amend and rescind rules as may be
21 necessary to carry out the provisions of this article. Any rules shall be filed in the Office of the

1 Secretary of State within thirty days of adoption by the board. The provisions of the State
2 Administrative Procedures Act apply to the board.

3 **§29-6A-10. Employee rights.**

4 (a) It is lawful for state employees to organize, form, join or assist in employee organizations
5 and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and
6 protection and to bargain collectively through representatives of their own free choice. Employees
7 also have the right to refrain from these activities, except as may be required pursuant to the
8 provisions of this article or pursuant to any maintenance of membership provision or representation
9 fee provision in a collective bargaining agreement.

10 (b) Nothing in this article prevents an employee from presenting a grievance to the employer
11 and having the grievance heard and settled without the intervention of an employee organization:
12 *Provided*, That the exclusive bargaining representative is afforded the opportunity to be present and
13 to present its views on the matter: *Provided, however*, That any settlement made may not be
14 inconsistent with the terms of any agreement in effect between the employer and the exclusive
15 bargaining representative.

16 **§29-6A-11. Exclusive representation.**

17 (a) When a majority of the state employees casting valid ballots in a secret ballot election
18 select a representative for the purpose of bargaining collectively, the representative shall be the
19 exclusive representative of all the employees in the unit for the purpose of collective bargaining.

20 (b) Labor organizations recognized by the state as the exclusive representative are responsible
21 for representing the interests of all state employees in the bargaining unit. Nothing herein may be

1 construed to limit an exclusive representative's right to exercise its discretion to refuse to process
2 grievances of employees that are not meritorious.

3 **§29-6A-12. Unit determination.**

4 (a) For the purposes of collective bargaining, all of the eligible employees of a specific
5 executive department or independent agency as defined in article one, chapter five-f of this code
6 shall constitute an appropriate unit. Eligible employees of the Attorney General, the Secretary of
7 State, the Auditor, Treasurer, Agriculture and Parkways Authority shall constitute separate
8 appropriate units. Nothing may prohibit multiunit bargaining between state employers and the
9 exclusive representative or representatives of state employees except that all of the eligible
10 uniformed personnel of the West Virginia State Police shall constitute their own appropriate unit.
11 The board shall resolve all questions of eligibility of an employee to be included in an appropriate
12 unit that are not resolved by a state employer and employee organization through agreement or
13 through operation of agreed upon procedures.

14 (b) Supervisory employees may not be included in an appropriate unit with any other
15 employees, but supervisors shall be permitted to form their own separate homogeneous units in each
16 executive department.

17 **§29-6A-13. Representation recognition and election; procedures.**

18 (a) When an employee or group of employees, or any individual or employee organization
19 acting on behalf of an employee or group of employees, files a petition with the board alleging that
20 thirty percent of the employees in a unit are members or wish to be represented for collective
21 bargaining by a designated representative, or wish to decertify the existing exclusive representative,

1 the board shall investigate or conduct hearings to determine the validity of the matters contained in
2 the petition before determining whether or not an order should be issued. If the board determines
3 that thirty percent of the employees in an appropriate unit are members of or wish to be represented
4 by a designated employee organization, or wish to decertify a currently certified exclusive
5 representative, the board shall order and conduct a secret ballot election. Within seven days of a
6 request from the board, a state employer shall provide the board a list of all state employees
7 described in the petition for recognition accompanied by notations indicating whether each employee
8 is included or excluded from the bargaining unit. The petitioning employee organization, and any
9 incumbent exclusive representative employee organization, shall be provided with a copy of such
10 list. Representation elections shall be supervised by the board and shall be conducted by secret ballot
11 at times and places selected by the board, subject to the following:

12 (1) A petition to decertify an existing exclusive representative shall be considered timely and
13 processed only if:

14 (A) Filed more than one year after the exclusive representative was certified or recertified;
15 and

16 (B) If a collective bargaining agreement is in effect, within the period commencing ninety
17 days prior and ending sixty days prior to the expiration of the collective bargaining agreement.

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

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

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

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

6 (6) In addition to any currently certified or petitioning employee organization, the ballot shall
7 contain the names of any employee organization presenting cards signed by at least twenty percent
8 of the employees in the appropriate unit indicating their wish to be represented for the purpose of
9 collective bargaining by the organization and the ballot shall also contain a provision allowing an
10 employee to mark "no representation";

11 (7) A representative may not be certified unless it receives a majority of the valid ballots cast;

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

17 (9) The board shall have the final determination on any controversy concerning the eligibility
18 of an employee to vote;

19 (10) The board shall certify the results of an election within seven calendar days after the
20 final tally of votes and the board determines, after any challenges are filed, that the challenges are
21 without merit. Any challenge to the conduct of an election must be filed within five calendar days

1 of the final tally of votes.

2 (b) As an alternative to subsection (a) of this section, an employee organization may petition
3 the board for voluntary recognition without an election. Upon a finding that a majority of eligible
4 employees in the appropriate unit are members or wish to be represented by a designated
5 representative, the board shall certify the employee organization as the exclusive representative
6 without conducting an election: *Provided*, That the employer agrees to waive the requirement for
7 an election and that there is no rival claim for recognition or petition for an election.

8 **§29-6A-14. Duty to bargain.**

9 (a) Collective bargaining shall take place between state employers and recognized employee
10 organizations and shall result in execution of a written contract incorporating any agreement reached
11 on wages, hours, working conditions and other terms and conditions of employment.

12 (b) Matters subject to negotiation shall include payroll withholding of employee organization
13 dues and representation fees including the automatic deduction of such fees from the paychecks of
14 nonmember employees. Where there is an exclusive representative for a bargaining unit, only the
15 exclusive representative has the right to payroll withholding of employee organization dues for
16 employees in that bargaining unit.

17 (c) Where a collective bargaining agreement is terminated, or continues in effect beyond its
18 scheduled expiration date pending the negotiation of a successor agreement or the resolution of an
19 impasse, the employer shall continue to honor and abide by any dues deduction or representation fee
20 clause contained therein until a new agreement is reached including dues deduction or a
21 representation fee clause.

1 (d) The general adjustment to the employee pay plans, other general adjustments to pay
2 affecting all employees including nonbase building adjustments, and matters relating to health care
3 benefits shall be subject to bargaining between a coalition of all exclusive representatives and a
4 representative designated by the Governor. Each employee organization that is part of the coalition
5 shall exercise authority over decisions of the coalition proportional to the number of employees
6 exclusively represented in the coalition by the employee organization.

7 **§29-6A-15. Written agreements; appropriations; grievance procedure required.**

8 (a) All cost items resulting from coalition bargaining concerning the general adjustments to
9 the employee pay plans and health care benefit agreements that may not be paid from existing
10 appropriations, shall be subject to approval and appropriations by the State Legislature. The
11 Governor shall submit to the Legislature, within ten days of the date on which an agreement is
12 ratified by the exclusive representatives, all cost items contained in the agreement: *Provided*, That
13 if any cost items require appropriations by the State Legislature while it is not in session, the cost
14 items shall be submitted by the Governor for inclusion in the next operating budget. If the State
15 Legislature rejects any of the cost items submitted to them, all items shall be returned to the parties
16 for further negotiations. Nothing in this section shall be construed to allow the State Legislature to
17 reject cost items in an agreement that it has approved.

18 (b) Because effective and orderly operation of government is essential to the public, it is
19 declared to be in the public interest that in the course of collective bargaining, the state employer and
20 the exclusive representative shall make every reasonable effort to conclude negotiations, and include
21 provisions for an effective date, a reopening date and an expiration date, at a time to coincide, as

1 nearly as possible, with the period during which appropriate legislative or governing bodies may act
2 upon the operating budget of the employers.

3 (c) All existing rules adopted by the employer, including civil service and other personnel
4 regulations, which are not contrary to this article or a collective bargaining agreement, remain
5 applicable. The duty to bargain collectively includes an obligation to negotiate over any matter with
6 respect to wages, hours and other conditions of employment, not specifically provided in any other
7 law or not specifically in violation of the provisions of any law. If any other law pertains, in part,
8 to a matter affecting the wages, hours and other conditions of employment, the other law shall not
9 be construed as limiting the duty to bargain collectively and to enter into collective bargaining
10 agreements containing clauses which either supplement, implement or relate to the effect of
11 provisions in other laws. If there is a conflict between the collective bargaining agreement and any
12 rules, the terms of the agreement shall prevail. Notwithstanding any other provision of this code to
13 the contrary, matters described in section five, article five, chapter five, sections ten, twenty-four and
14 twenty-six, article two, chapter fifteen and article six, chapter twenty-nine of this code are
15 substantively subject to bargaining at the request of either party.

16 (d) As an exception to articles two and three of chapter six-c and sections six and twenty-one,
17 article two, chapter fifteen of this code, every collective bargaining agreement shall contain a
18 grievance procedure culminating in final and binding arbitration by a neutral third party which shall
19 be the exclusive grievance and disciplinary appeals procedure for employees covered by the
20 agreement. The decision of an arbitrator is valid and enforceable when entered into in accordance
21 with the provisions of this article. The grievance procedure may not include matters relating to the

1 classification of any position.

2 (e) A collective bargaining agreement may not be in force and effect for a period of more than
3 four years.

4 **§29-6A-16. Impasses; mediation.**

5 Either a state employer or the exclusive representative or coalition of exclusive
6 representatives may declare that an impasse has been reached between the parties in bargaining over
7 the wages, hours, working conditions or other terms and conditions of employment. Upon
8 declaration of impasse by the employer or the representative, a mediator shall be selected by the
9 board. The mediator shall meet immediately with the parties or their representatives, either jointly
10 or separately, and shall take other steps as may be deemed appropriate in order to persuade the
11 parties to reach a mutually acceptable agreement. The mediator has the power to control the agenda
12 and require the attendance of parties. All expenses of mediation shall be borne by the board.

13 **§29-6A-17. Impasses; arbitration.**

14 (a) If the mediator is unable to effect settlement of the controversy within thirty days of the
15 beginning of mediation in accordance with the provisions of the preceding section, either party may,
16 by written notification to the other or to the board, submit the remaining differences to interest
17 arbitration. Each party shall submit a final offer on each separate item remaining at impasse to the
18 arbitrator and the other party. The arbitrator, following the procedures prescribed in subsection (b)
19 of this section, shall determine that either the final offer of the employer or the final offer of the
20 exclusive representative on each separate issue shall be incorporated into the final collective
21 bargaining agreement: *Provided*, That the arbitrator shall not amend the offer of either party on any

1 issue. Unless the parties have mutually agreed to retain the mediator as arbitrator, or have agreed
2 upon another individual, the board shall submit five names of potential arbitrators to the parties.
3 Each party shall alternately strike a name until one arbiter remains. The name of potential arbitrators
4 shall be submitted by the board from lists provided by the American Arbitration Association or the
5 Federal Mediation and Conciliation Service.

6 (b) The arbitrator shall, within ten days of appointment or as mutually agreed, meet with the
7 parties or their representatives, either jointly or separately, and shall make inquiries and
8 investigations, hold hearings, and take other steps as may be deemed appropriate in accordance with
9 procedures prescribed by the board. The arbitrator has the power to issue subpoenas requiring the
10 attendance and testimony of the parties, their representatives and other relevant witnesses and the
11 production of any evidence deemed appropriate by the arbitrator in conducting hearings,
12 investigations or inquiries.

13 (c) In reaching a decision regarding resolution of outstanding disputes, the arbitrator shall
14 take into consideration, in addition to any other relevant factors, the following:

15 (1) Comparison of the wages, hours and conditions of employment of the employees involved
16 in the arbitration proceeding with the wages, hours and conditions of employment of employees
17 performing similar services or requiring similar skills under similar working conditions and with
18 other employees generally in public and private employment in comparable communities;

19 (2) Comparison of peculiarities in regard to other trades or professions, including
20 specifically: (A) Hazards of employment; (B) physical qualifications; (C) educational qualifications;
21 (D) mental qualifications; and (E) job training and skills;

1 (3) The terms of collective agreements negotiated between the parties in the past, or of other
2 previously existing arrangements providing for compensation and fringe benefits, including, but not
3 limited to, provisions for salary, insurance and retirement benefits, medical and hospitalization
4 benefits, paid time off and job security; and

5 (4) The ability of the state employer to pay for the items to be included in the contract.

6 (d) Not later than thirty days following appointment or at such other time as mutually agreed,
7 the arbitrator shall transmit a decision to the board and to the parties. The parties shall execute an
8 agreement embodying the decision of the arbitrator as to all issues which had been unresolved as
9 well as those items mutually agreed upon. The decision of the arbitrator on matters requiring an
10 appropriation of funds is subject to approval and appropriation by the Legislature.

11 (e) The expenses of arbitration shall be borne by the board.

12 **§29-6A-18. Strikes prohibited.**

13 Strikes by state employees are prohibited at any time.

14 **§29-6A-19. Remedies for prohibited strikes.**

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

19 **§29-6A-20. Prohibited practices.**

20 (a) It is a prohibited practice for a state employer or its representative to willfully:

21 (1) Interfere, restrain or coerce any employee in the exercise of any right guaranteed under

1 this article;

2 (2) Dominate, interfere or assist in the formation, existence or administration of any
3 employee organization, or to give monetary or other support to the organization other than to furnish,
4 upon request, customary and routine services and facilities;

5 (3) Discriminate in regard to hiring, tenure, term or condition of employment to encourage
6 or discourage membership in any employee organization except as pursuant to implementation of
7 a valid agreement for representation fees;

8 (4) Discharge or otherwise discriminate against an employee because he or she has signed
9 or filed an affidavit, petition or complaint or given any information or testimony under this article,
10 or because he or she has formed, joined or chosen to be represented by any employee organization;

11 (5) Refuse to bargain collectively in good faith with the exclusive representative as required
12 in this article;

13 (6) Refuse to participate in good faith in the mediation and arbitration procedures set forth
14 in sections sixteen and seventeen of this article;

15 (7) Refuse or fail to comply with any provision of this article; or

16 (8) Refuse to supply to any exclusive representative budgetary information regarding the
17 receipts and disbursements of the state or refuse to supply any other information necessary to the
18 preparation and conduct of negotiations or the processing of grievances.

19 (b) It is a prohibited practice for a state employee organization or its designated agent to
20 willfully:

21 (1) Refuse to bargain collectively in good faith with the state employer if it is an exclusive

1 representative, as required in this article;

2 (2) Refuse to participate in good faith in the mediation and arbitration procedures set forth
3 in sections sixteen and seventeen of this article; or

4 (3) Refuse to fairly represent employees for whom it serves as the exclusive representative.

5 **§29-6A-21. Prohibited practices; hearings and remedies.**

6 (a) A state employer, employee, employee organization or exclusive representative may file
7 a written complaint with the board. The complaint shall state that a prohibited practice as defined
8 in section twenty of this article has been committed and that relief from the prohibited practice is
9 requested. Upon receipt of a written complaint the board or its agent shall:

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

12 (2) Investigate the complaint to determine if a hearing on the prohibited practice allegation
13 is warranted. If the investigation reveals, that no issue of fact or law exists, the board may either
14 grant the relief or dismiss the complaint;

15 (3) If the investigation reveals that an issue of fact or law exists, a board hearing on the
16 matter shall be held within twenty 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 authorized to:

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

21 (2) Administer oaths and affirmations;

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

3 (4) Regulate the course of the hearing;

4 (5) Exclude immaterial, irrelevant or repetitious evidence; and

5 (6) Sequester witnesses.

6 (c) Where the board finds that any person or entity charged in the complaint has engaged in
7 or is engaging in prohibited practices 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 engaged in prohibited practices an
10 order to cease and desist from the prohibited practice;

11 (3) Award representative costs, as determined by the board, to the prevailing party; and

12 (4) Take affirmative action, including, but not limited to, the reinstatement of employees with
13 pay, as is deemed fair and equitable in accordance with the provisions of this article.

14 (d) Where the board finds that the person or entity charged in the complaint has not engaged
15 or is not engaging in a prohibited practice the board shall issue an order dismissing the complaint.

16 (e) The decision of the board is final upon the parties and is enforceable in circuit court by
17 any of them. In addition, the board may petition the circuit court of the county in which the
18 prohibited practice occurred to enforce its orders and to grant it other relief including, but not limited
19 to, an injunction.

20 **§29-6A-22. Payroll deductions.**

21 (a) The employer, upon receiving from the exclusive representative a written statement which

1 certifies the amount of initiation fees and periodic dues, shall deduct the fees and dues from the
2 wages due to the employees from the employer. In accordance with the terms of a collective
3 bargaining agreement, the deductions may apply to all employees of the bargaining unit, whether as
4 dues for members of the applicable exclusive bargaining representative or as a representation fee
5 payment for nonmembers. Membership in the exclusive representative is not required of any
6 bargaining unit employee.

7 (b) Deductions, authorized by members of the exclusive representative, or representation fee
8 payments required to be deducted from the wages of nonmembers pursuant to a collective bargaining
9 agreement, shall be made at times mutually agreed upon by the employer and the exclusive
10 representative in amounts prorated in equal installments. The amounts so deducted shall be
11 forwarded by the employer to the exclusive representative. Nothing in the foregoing may be
12 construed to prevent the parties from agreeing to allow for lump sum payment of dues or agreeing
13 to another arrangement.

14 (c) The wage deduction permitted by this section shall be paid to the employee organization
15 chosen as the exclusive representative of an appropriate bargaining unit. Payments terminate when
16 an employee organization ceases to function as the exclusive representative of the appropriate
17 bargaining unit.

18 (d) In addition to any deduction made and forwarded to the exclusive representative under
19 subsections (a) and (b) of this section, the employer shall, upon written authorization by an
20 employee, deduct from the payroll of the amount of group insurance premiums, and other charges
21 for employee organization benefits, funds and plans administered by the exclusive representative and

1 shall remit the amount designated by the employee to the exclusive representative.

2 (e) The employer shall continue all payroll assignments authorized by an employee prior to
3 the effective date of this article and all assignments authorized under subsection (d) of this section
4 until the employee notifies the employer to discontinue his or her assignments in accordance with
5 any applicable collective bargaining agreement or until the employee organization ceases to be the
6 exclusive representative of the appropriate bargaining unit.

7 **§29-6A-23. Financial reports to employees.**

8 Every employee organization shall keep an adequate record of its financial transactions and
9 shall make available annually to the employees who are members of the organization, within ninety
10 days after the end of its fiscal year, a detailed written financial report in the form of a balance sheet
11 and an operating statement, certified as to accuracy by a certified public accountant. In the event of
12 failure of compliance with this section, any employee within a bargaining unit exclusively
13 represented by the organization may petition the State Labor Relations Board for an order compelling
14 compliance. The board may enforce its order by instituting suit in the circuit court having
15 jurisdiction in this matter. An employee organization seeking to become an exclusive representative
16 must file with the board a copy of its most recent financial report and constitution and bylaws.

17 **§29-6A-24. Public records and proceedings.**

18 The complaints, orders and testimony relating to a proceeding instituted by the State Labor
19 Relations Board are public records and shall be made available for inspection or copying.

20

NOTE: The purpose of this bill is to promote orderly and constructive employment relations between the state and its employees; to increase the efficiency of the state; and to ensure the health and safety of the citizens of this state. The bill provides for the Legislature to determine that these policies and purposes may best be accomplished by: Granting to state employees the right to associate with others in organizing and choosing representatives for the purpose of collective bargaining; requiring the state to recognize, negotiate and bargain with employee organizations representing state employees and to enter into written agreements evidencing the result of bargaining; and encouraging labor peace through the establishment of standards and procedures which protect the rights of the state, the state employee and the citizens of this state.

This article is new; therefore, strike-throughs and underscoring have been omitted.