

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2350

FISCAL  
NOTE

BY DELEGATE THOMPSON

[Introduced January 11, 2019; Referred  
to the Committee on Industry and Labor then the  
Judiciary. ]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §6C-5-1, §6C-5-2, §6C-5-3 and §6C-5-4, all relating to permitting public  
 3 employees the right to collectively bargain; providing for an exclusive representative;  
 4 providing a procedure; and setting forth matters subject to collective bargaining.

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

**ARTICLE 5. RIGHT OF PUBLIC EMPLOYEES TO ENGAGE IN COLLECTIVE  
 BARGAINING.**

**§6C-5-1. Rights of public employees.**

1 Public employees have the right to:

2 (1) Form, join, assist, or participate in, joining, assisting, or participating in any employee  
 3 organization of their own choosing;

4 (2) Engage in other concerted activities for the purpose of collective bargaining or other  
 5 mutual aid and protection;

6 (3) Representation by an employee organization;

7 (4) Bargain collectively with their public employers to determine wages, hours, terms, and  
 8 other conditions of employment and the continuation, modification, or deletion of an existing  
 9 provision of a collective bargaining agreement, and enter into collective bargaining agreements;

10 (5) Present grievances and have them adjusted, without the intervention of the bargaining  
 11 representative, as long as the adjustment is not inconsistent with the terms of the collective  
 12 bargaining agreement then in effect and as long as the bargaining representatives have the  
 13 opportunity to be present at the adjustment.

**§6C-5-2. Public employees' exclusive representative.**

1 (a) Public employers shall extend to an exclusive representative the right to represent  
 2 exclusively the employees in the appropriate bargaining unit and the right to unchallenged and  
 3 exclusive representation for a period of not less than 12 months following the date of certification

4 and thereafter, if the public employer and the employee organization enter into an agreement, for  
5 a period of not more than three years from the date of signing the agreement. For the purposes  
6 of this section, extensions of agreements shall not be construed to affect the expiration date of  
7 the original agreement.

8 (b) A public employer shall bargain collectively with an exclusive designated  
9 representative.

10 (c) The public employer shall designate an employer representative and promptly notify  
11 the employee organization of his or her identity and address. On certification, the employee  
12 organization shall designate an employee representative and promptly notify the public employer  
13 of his or her identity and address. The parties shall address to the appropriate designated  
14 representative all communications concerned with collective relationships.

**§6C-5-3. Employee organization to become exclusive representative; procedure.**

1 (a) An employee organization becomes the exclusive representative of all the public  
2 employees in an appropriate unit for the purposes of collective bargaining by filing a request with  
3 a public employer for recognition as an exclusive representative. In the request for recognition,  
4 the employee organization shall describe the bargaining unit, shall allege that a majority of the  
5 employees in the bargaining unit wish to be represented by the employee organization, and shall  
6 support the request with substantial evidence based on, and in accordance with, rules prescribed  
7 by the employer demonstrating that a majority of the employees in the bargaining unit wish to be  
8 represented by the employee organization. Immediately upon receipt of a request, the public  
9 employer shall post notice in each facility at which employees in the proposed unit are employed,  
10 setting forth the description of the bargaining unit, the name of the employee organization  
11 requesting recognition, and the date of the request for recognition, and advising employees that  
12 objections to certification must be filed with the employer not later than the 21st day following the  
13 date of the request for recognition;

14 (b) The public employer shall certify the employee organization filing the request for

15 recognition on the 22nd day following the filing of the request for recognition, unless by the 21st  
16 day following the filing of the request for recognition it receives:

17 (i) Substantial evidence demonstrating that a majority of the employees in the described  
18 bargaining unit do not wish to be represented by the employee organization filing the request for  
19 recognition;

20 (ii) Substantial evidence from another employee organization demonstrating that at least  
21 10 percent of the employees in the described bargaining unit wish to be represented by such  
22 other employee organization; or

23 (iii) Substantial evidence indicating that the proposed unit is not an appropriate unit.

24 (c) Nothing in this section may be construed to permit a public employer to recognize an  
25 employee organization as an exclusive representative if there is in effect a lawful written  
26 agreement, contract, or memorandum of understanding between the public employer and another  
27 employee organization which, on the effective date of this section, has been recognized by a  
28 public employer as the exclusive representative of the employees in a unit or which by tradition,  
29 custom, practice, election, or negotiation has been the only employee organization representing  
30 all employees in the unit; this restriction does not apply to that period of time covered by any  
31 agreement which exceeds three years. For the purposes of this section, extensions of agreement  
32 do not affect the expiration of the original agreement.

**§6C-5-4. Matters subject to collective bargaining.**

1 (a) All matters pertaining to wages, hours, or terms and other conditions of employment  
2 and the continuation, modification, or deletion of an existing provision of a collective bargaining  
3 agreement are subject to collective bargaining between the public employer and the exclusive  
4 representative.

5 (b) The conduct and grading of civil service examinations, the rating of candidates, the  
6 establishment of eligible lists from the examinations, and the original appointments from the  
7 eligible lists are not appropriate subjects for collective bargaining.

- 8            (c) Unless a public employer agrees otherwise in a collective bargaining agreement,  
9 nothing in this article impairs the right and responsibility of each public employer to:
- 10            (1) Determine matters of inherent managerial policy which include, but are not limited to,  
11 areas of discretion or policy such as the functions and programs of the public employer, standards  
12 of services, its overall budget, utilization of technology, and organizational structure;
- 13            (2) Direct, supervise, evaluate, or hire employees;
- 14            (3) Maintain and improve the efficiency and effectiveness of governmental operations;
- 15            (4) Determine the overall methods, process, means, or personnel by which governmental  
16 operations are to be conducted;
- 17            (5) Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign,  
18 schedule, promote, or retain employees;
- 19            (6) Determine the adequacy of the workforce;
- 20            (7) Determine the overall mission of the employer as a unit of government;
- 21            (8) Effectively manage the workforce; or
- 22            (9) Take actions to carry out the mission of the public employer as a governmental unit.
- 23            (d) The employer is not required to bargain on subjects reserved to the management and  
24 direction of the governmental unit except as affect wages, hours, terms, and conditions of  
25 employment, and the continuation, modification, or deletion of an existing provision of a collective  
26 bargaining agreement. A public employee or exclusive representative may raise a legitimate  
27 complaint or file a grievance based on the collective bargaining agreement.

NOTE: The purpose of this bill is to permit public employees the right to collectively bargain. The bill provides for an exclusive representative. The bill provides a procedure. The bill sets forth matters subject to collective bargaining.

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