

1 **Senate Bill No. 5**

2 (By Senator Yost)

3 \_\_\_\_\_  
4 [Introduced January 12, 2011; referred to the Committee on the  
5 Judiciary; and then to the Committee on Finance.]

6 \_\_\_\_\_  
7 **FISCAL**  
8 **NOTE**

9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §29-6A-1, §29-6A-2,  
12 §29-6A-3, §29-6A-4, §29-6A-5, §29-6A-6, §29-6A-7, §29-6A-8,  
13 §29-6A-9, §29-6A-10, §29-6A-11, §29-6A-12, §29-6A-13, §29-6A-  
14 14, §29-6A-15, §29-6A-16, §29-6A-17, §29-6A-18, §29-6A-19,  
15 §29-6A-20, §29-6A-21, §29-6A-22, §29-6A-23, §29-6A-24, §29-6A-  
16 25 and §29-6A-26, all relating to promoting orderly and  
17 constructive employment relations between the state and its  
18 employees; increasing the efficiency of the state; ensuring  
19 the health and safety of the citizens of this state; requiring  
20 the state to recognize, negotiate and bargain with employee  
21 organizations representing state employees and to enter into  
22 written agreements evidencing the result of bargaining; and  
23 encouraging labor peace through the establishment of standards

1 and procedures which protect the rights of the state, the  
2 state's employees and the citizens of this state.

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

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

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

12 **§29-6A-1. Legislative purpose.**

13 The Legislature of the State of West Virginia declares that  
14 the trial meet and consult process between state departments and  
15 employee representatives has improved organizational efficiency,  
16 enhanced the quality of work life, and led to harmonious relations  
17 between employees and state managers. In order to build upon this  
18 success, it is the public policy of this state and the purpose of  
19 the Legislature in the enactment of this article to promote orderly  
20 and constructive employment relations between the state and its  
21 employees; to increase the efficiency of the state; and to ensure  
22 the health and safety of the citizens of this state. The  
23 Legislature has determined that these policies and, purposes may

1 best be accomplished by: (1) Granting to state employees the  
2 right to associate with others in organizing and choosing  
3 representatives for the purpose of collective bargaining; (2)  
4 requiring the state to recognize, negotiate and bargain with  
5 employee organizations representing state employees and to enter  
6 into written agreements evidencing the result of bargaining; and  
7 (3) encouraging labor peace through the establishment of standards  
8 and procedures which protect the rights of the state, the state  
9 employee and the citizens of this state.

10 **§29-6A-2. Short title.**

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

13 **§29-6A-3. Definitions.**

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

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

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

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

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

9           (c) "Board" means the state Labor Relations Board created  
10 pursuant to section four of this article.

11           (d) "Certification" means official designation by the state  
12 Labor Relations Board that the employee organization is the  
13 exclusive representative for all the employees in an appropriate  
14 bargaining unit for the purpose of collective bargaining.

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

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

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

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

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

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

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

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

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

16          (n) "Supervisory employee" means any individual whose  
17 principal activity includes and who spends a preponderance of his  
18 or her workday exercising nonroutine and nonclerical authority and  
19 who uses independent judgment to hire, transfer, suspend, lay off,  
20 recall, promote, discharge, assign, reward or discipline other  
21 employees or an individual who has the responsibility to assign  
22 work, direct other employees, adjust employee grievances, or an  
23 individual who recommends any of these employee actions and whose

1 duties are substantially distinct from these other employees.

2 **§29-6A-4. West Virginia State Labor Relations Board created.**

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

8 **§29-6A-5. Composition of board; terms of members; qualifications**  
9                   **of members.**

10       The board shall consist of three members, each of whom shall  
11 be appointed by the Governor, and one of whom shall be appointed by  
12 the Governor from a list of at least three individuals provided by  
13 the largest labor organization in the state. All members shall be  
14 citizens of the state, and shall be appointed by and with the  
15 advice and consent of the Senate. The members shall be appointed  
16 for terms of four years, except that one of the original terms  
17 shall be for a term of four years, another one of the original  
18 terms shall be for a term of three years and the remaining original  
19 term shall be for a term of two years.

20       No person shall be eligible for appointment to membership on  
21 the board who is the holder of any public office or public  
22 employment under the federal government or under the government of  
23 this state or any of its political subdivisions, or an appointee or

1 employee of the board. Not more than two members of the board  
2 shall be members of the same political party.

3 **§29-6A-6. Original term of members; vacancies; eligibility for**  
4 **reappointment; oath of office; removal from office.**

5 The Governor shall appoint the three members of the board  
6 within sixty days of the effective date of this article. The  
7 original terms of office of members begin on July 1, 2011.

8 The Governor shall appoint a member by and with the advice and  
9 consent of the Senate to fill any vacancy among the members of the  
10 board. The member appointed to fill the vacancy shall serve for  
11 the unexpired term of the vacating member.

12 All members of the board shall be eligible for reappointment.  
13 Before exercising any authority or performing any duties as a  
14 member of the board, each member shall qualify by taking and  
15 subscribing to the oath of office prescribed by section five,  
16 article IV of the state Constitution.

17 No member of the board may be removed from office by the  
18 Governor except for official misconduct, incompetence, neglect of  
19 duty or gross immorality and only in the manner prescribed by law  
20 for the removal of state elective officers.

21 **§29-6A-7. Meetings; quorum; per diem and expenses of members.**

22 The board shall hold at least four meetings in every fiscal  
23 year beginning July 1 and ending the following June 30. One



1 meeting, known as the annual meeting, shall be held in July, or as  
2 soon thereafter as practicable, in the year 2011 and in July of  
3 each subsequent year. Annual meetings, as well as the three  
4 additional required meetings in each fiscal year, shall be held on  
5 dates and at places as the board may prescribe: In addition to the  
6 statutorily required meetings, the board may, upon its own  
7 resolution or at the call of the chairperson of the board, meet at  
8 other times.

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

22       The members of the board shall be paid \$300 per diem, or such  
23 other amount as specified by the Legislature in appropriations, for

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

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

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

13 The board shall employ an executive officer and other  
14 professional, administrative, clerical and other employees,  
15 including, but not limited to, mediators and hearing officers, as  
16 may be necessary to assist the board in the performance of its  
17 duties and responsibilities and consistent with legislative  
18 appropriations. The board shall be represented in any judicial  
19 proceedings pursuant to this article by the Attorney General of the  
20 State of West Virginia or his or her designee. The board shall  
21 prescribe the duties and fix the compensation and emoluments of all  
22 employees. Employees of the board shall serve under the direction  
23 and control of the board or its designated representatives. The

1 board shall provide suitable offices for the executive officer and  
2 his or her staff in or near the state Capitol Complex in  
3 Charleston, West Virginia.

4 **§29-6A-9. Rules.**

5       The board has authority from time to time to make, amend and  
6 rescind rules as may be necessary to carry out the provisions of  
7 this article. Any rules shall be filed in the Office of the  
8 Secretary of State within thirty days of adoption by the board.  
9 The provisions of the state Administrative Procedures Act apply to  
10 the board.

11 **§29-6A-10. Employee rights.**

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

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

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

7 **§29-6A-11. Exclusive representation.**

8 (a) When a majority of the state employees casting valid  
9 ballots in a secret ballot election select a representative for the  
10 purpose of bargaining collectively, the representative shall be the  
11 exclusive representative of all the employees in the unit for the  
12 purpose of collective bargaining.

13 (b) Labor organizations recognized by the state as the  
14 exclusive representative are responsible for representing the  
15 interests of all state employees in the bargaining unit. Nothing  
16 herein shall be construed to limit an exclusive representative's  
17 right to exercise its discretion to refuse to process grievances of  
18 employees that are not meritorious.

19 **§29-6A-12. Unit determination.**

20 (a) For the purposes of collective bargaining, all of the  
21 eligible employees of a specific executive department or  
22 independent agency as defined in Article 5F-1 of the West Virginia  
23 Code shall constitute an appropriate unit. Eligible employees of

1 the Attorney General, the Secretary of State, the Auditor,  
2 Treasurer, Agriculture and Parkways Authority shall constitute  
3 separate appropriate units. Nothing shall prohibit multiunit  
4 bargaining between state employers and the exclusive representative  
5 or representatives of state employees except that all of the  
6 eligible uniformed personnel of the West Virginia State Police  
7 shall constitute their own appropriate unit. The board shall  
8 resolve all questions of eligibility of an employee to be included  
9 in an appropriate unit that are not resolved by a state employer  
10 and employee organization through agreement or through operation of  
11 agreed upon procedures.

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

16 **§29-6A-13. Representation recognition and election; procedures.**

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

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

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

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

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

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

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

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

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

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

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

23          (8) In an election where none of the choices on the ballot

1 receive a majority of the valid ballots cast, a run-off election  
2 shall be conducted within thirty days after the result of the  
3 election is certified by the board. The ballot for the run-off  
4 election shall include a provision for a selection between only the  
5 two choices or parties receiving the highest number of ballots cast  
6 in the previous election.

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

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

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

23 **§29-6A-14. Duty to bargaining.**



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

6           (b) Matters subject to negotiation shall include payroll  
7 withholding of employee organization dues and representation fees  
8 including the automatic deduction of such fees from the paychecks  
9 of nonmember employees. Where there is an exclusive representative  
10 for a bargaining unit, only the exclusive representative shall have  
11 the right to payroll withholding of employee organization dues for  
12 employees in that bargaining unit.

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

20           (d) The general adjustment to the employee pay plans, other  
21 general adjustments to pay affecting all employees including  
22 nonbase building adjustments, and matters relating to health care  
23 benefits shall be subject to bargaining between a coalition of all

1 exclusive representatives and a representative designated by the  
2 Governor. Each employee organization that is part of the coalition  
3 shall exercise authority over decisions of the coalition  
4 proportional to the number of employees exclusively represented in  
5 the coalition by the employee organization.

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

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

23 (b) Because effective and orderly operation of government is

1 essential to the public, it is declared to be in the public  
2 interest that in the course of collective bargaining, the state  
3 employer and the exclusive representative shall make every  
4 reasonable effort to conclude negotiations, and include provisions  
5 for an effective date, a reopening date and an expiration date, at  
6 a time to coincide, as nearly as possible, with the period during  
7 which appropriate legislative or governing bodies may act upon the  
8 operating budget of the employers.

9 (c) All existing rules adopted by the employer, including civil  
10 service and other personnel regulations, which are not contrary to  
11 this article or a collective bargaining agreement, shall remain  
12 applicable. The duty to bargain collectively shall include an  
13 obligation to negotiate over any matter with respect to wages,  
14 hours and other conditions of employment, not specifically provided  
15 in any other law or not specifically in violation of the provisions  
16 of any law. If any other law pertains, in part, to a matter  
17 affecting the wages, hours and other conditions of employment, the  
18 other law shall not be construed as limiting the duty to bargain  
19 collectively and to enter into collective bargaining agreements  
20 containing clauses which either supplement, implement or relate to  
21 the effect of provisions in other laws. If there is a conflict  
22 between the collective bargaining agreement and any rules, the  
23 terms of the agreement shall prevail. Notwithstanding any other

1 provision of this code to the contrary, matters described in  
2 article five, chapter five, section five, article two, chapter  
3 fifteen, sections ten, twenty-four and twenty-six, article six,  
4 chapter twenty-nine of this code shall be substantively subject to  
5 bargaining at the request of either party.

6 (d) As an exception to articles two and three of chapter six-c  
7 and section six and twenty-one, article two, chapter fifteen of  
8 this code, every collective bargaining agreement shall contain a  
9 grievance procedure culminating in final and binding arbitration by  
10 a neutral third party which shall be the exclusive grievance and  
11 disciplinary appeals procedure for employees covered by the  
12 agreement. The decision of an arbitrator shall be valid and  
13 enforceable when entered into in accordance with the provisions of  
14 this article. The grievance procedure may not include matters  
15 relating to the classification of any position.

16 (e) A collective bargaining agreement shall not be in force  
17 and effect for a period of more than four years.

18 **§29-6A-16. Impasses; mediation.**

19 Either a state employer or the exclusive representative or  
20 coalition of exclusive representatives may declare that an impasse  
21 has been reached between the parties in bargaining over the wages,  
22 hours, working conditions or other terms and conditions of  
23 employment. Upon declaration of impasse by the employer or the

1 representative, a mediator shall be selected by the board. The  
2 mediator shall meet immediately with the parties or their  
3 representatives, either jointly or separately, and shall take other  
4 steps as may be deemed appropriate in order to persuade the parties  
5 to reach a mutually acceptable agreement. The mediator shall have  
6 the power to control the agenda and require the attendance of  
7 parties. All expenses of mediation shall be borne by the board.

8 **§29-6A-17. Impasses; arbitration.**

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

1 of potential arbitrators to the parties. Each party shall  
2 alternately strike a name until one arbiter remains. The name of  
3 potential arbitrators shall be submitted by the board from lists  
4 provided by the American Arbitration Association or the federal  
5 mediation and conciliation service.

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

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

19 (1) Comparison of the wages, hours and conditions of  
20 employment of the employees involved in the arbitration proceeding  
21 with the wages, hours and conditions of employment of employees  
22 performing similar services or requiring similar skills under  
23 similar working conditions and with other employees generally in

1 public and private employment in comparable communities;

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

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

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

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

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

23 **§29-6A-18. Strikes prohibited.**

1            Strikes by state employees are prohibited at any time.

2 **§29-6A-19. Remedies for prohibited strikes.**

3            If a strike of state employees occurs which would be  
4 prohibited under the provisions of section eighteen of this  
5 article, the state Attorney General may institute an action in the  
6 circuit court of the jurisdiction where the strike occurs, or in  
7 the Supreme Court of Appeals, for appropriate equitable relief.

8 **§29-6A-20. Prohibited practices.**

9            (a) It shall be a prohibited practice for a state employer or  
10 its representative to willfully:

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

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

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

21            (4) Discharge or otherwise discriminate against an employee  
22 because he or she has signed or filed an affidavit, petition or  
23 complaint or given any information or testimony under this article,



1 or because he or she has formed, joined or chosen to be represented  
2 by any employee organization;

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

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

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

10 (8) Refuse to supply to any exclusive representative budgetary  
11 information regarding the receipts and disbursements of the state  
12 or refuse to supply any other information necessary to the  
13 preparation and conduct of negotiations or the processing of  
14 grievances.

15 (b) It shall be prohibited practice for a state employee  
16 organization or its designated agent to willfully:

17 (1) Refuse to bargain collectively in good faith with the  
18 state employer if it is an exclusive representative, as required in  
19 this article;

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

23 (3) Refuse to fairly represent employees for whom it serves as

1 the exclusive representative.

2 **§29-6A-21. Prohibited practices; hearings and remedies.**

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

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

11 (2) Investigate the complaint to determine if a hearing on the  
12 prohibited practice allegation is warranted. If the investigation  
13 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  
16 exists, a board hearing on the matter shall be held within twenty  
17 days after a notice of the complaint has been received by the  
18 charged party.

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

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

23 (2) Administer oaths and affirmations;

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

3 (4) Regulate the course of the hearing;

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

6 (6) Sequester witnesses.

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

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

11 (2) Issue and cause to be served on the person or entity  
12 engaged in prohibited practices an order to cease and desist from  
13 the prohibited practice;

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

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

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

22 (e) The decision of the board shall be final upon the parties  
23 and shall be enforceable in circuit court by any of them. In

1 addition, the board may petition the circuit court of the county in  
2 which the prohibited practice occurred to enforce its orders and to  
3 grant it other relief including, but not limited to, an injunction.

4 **§29-6A-22. Payroll deductions.**

5 (a) The employer, upon receiving from the exclusive  
6 representative a written statement which certifies the amount of  
7 initiation fees and periodic dues, shall deduct the fees and dues  
8 from the wages due to the employees from the employer. In  
9 accordance with the terms of a collective bargaining agreement, the  
10 deductions may apply to all employees of the bargaining unit,  
11 whether as dues for members of the applicable exclusive bargaining  
12 representative or as a representation fee payment for nonmembers.  
13 Membership in the exclusive representative is not required of any  
14 bargaining unit employee.

15 (b) Deductions, authorized by members of the exclusive  
16 representative, or representation fee payments required to be  
17 deducted from the wages of nonmembers pursuant to a collective  
18 bargaining agreement, shall be made at times mutually agreed upon  
19 by the employer and the exclusive representative in amounts  
20 prorated in equal installments. The amounts so deducted shall be  
21 forwarded by the employer to the exclusive representative. Nothing  
22 in the foregoing shall be construed to prevent the parties from  
23 agreeing to allow for lump sum payment of dues or agreeing to

1 another arrangement.

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

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

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

22 **§29-6A-23. Financial reports to employees.**

23 Every employee organization shall keep an adequate record of

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

14 **§29-6A-24. Public records and proceedings.**

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

18 **§29-6A-25. Severability.**

19 If any provision of this article or the application thereof to  
20 any person or circumstance is held unconstitutional or invalid,  
21 such unconstitutionality or invalidity shall not affect other  
22 provisions or applications of the chapter, and to this end the  
23 provisions of this chapter are declared to be severable.

1 **§29-6A-26. Effective Date.**

2 This article is effective July 1, 2011.

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 Legislature has determined 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.