

1 **Senate Bill No. 164**

2 (By Senator Yost)

3 _____
4 [Introduced February 15, 2013; referred to the Committee on
5 Labor; and then to the Committee on Government Organization.]

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

20 (b) No person shall be eligible for appointment to membership
21 on 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 (a) 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, 2013.

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

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

17 (d) 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 (a) The board shall hold at least four meetings in every
23 fiscal 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 2013 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 (b) Of the three appointed members, two members of the board
10 shall constitute a quorum provided that if there are two vacancies
11 on the board, the remaining member shall be considered as the chair
12 and 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 (c) The members of the board shall be paid \$300 per diem, or
23 such other amount as specified by the Legislature in

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

7 **§29-6A-8. Organization of board; staff; offices.**

8 (a) At its first annual meeting in July, or as soon thereafter
9 as practicable, in the year 2013, and annually thereafter, the
10 board shall elect a chairperson and other officers from its
11 membership as the board may deem necessary or desirable. The
12 chairperson shall serve for a one-year term commencing on July 1,
13 following the annual meeting and ending on June 30 the following
14 year.

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

1 employees. Employees of the board shall serve under the direction
2 and control of the board or its designated representatives. The
3 board shall provide suitable offices for the executive officer and
4 his or her staff in or near the State Capitol Complex in
5 Charleston, West Virginia.

6 **§29-6A-9. Rules.**

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

13 **§29-6A-10. Employee rights.**

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

23 (b) Nothing in this article shall prevent an employee from

1 presenting a grievance to the employer and having the grievance
2 heard and settled without the intervention of an employee
3 organization: *Provided, That the exclusive bargaining*
4 *representative is afforded the opportunity to be present and to*
5 *present its views on the matter: Provided, however, That any*
6 *settlement made shall not be inconsistent with the terms of any*
7 *agreement in effect between the employer and the exclusive*
8 *bargaining representative.*

9 **§29-6A-11. Exclusive representation.**

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

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

21 **§29-6A-12. Unit determination.**

22 (a) For the purposes of collective bargaining, all of the
23 eligible employees of a specific executive department or

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

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

18 **§29-6A-13. Representation recognition and election; procedures.**

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

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

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

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

23 (B) If a collective bargaining agreement is in effect, within

1 the period commencing ninety days prior and ending sixty days prior
2 to the expiration of the collective bargaining agreement.

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

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

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

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

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

23 (7) A representative may not be certified unless it receives

1 a majority of the valid ballots cast;

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

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

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

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

1 claim for recognition or petition for an election.

2 **§29-6A-14. Duty to bargaining.**

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

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

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

22 (d) The general adjustment to the employee pay plans, other
23 general adjustments to pay affecting all employees including

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

8 **§29-6A-15. Written agreements; appropriations; grievance procedure**
9 **required.**

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

1 items in an agreement that it has approved.

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

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

1 there is a conflict between the collective bargaining agreement and
2 any rules, the terms of the agreement shall prevail.
3 Notwithstanding any other provision of this code to the contrary,
4 matters described in section five, article five, chapter five,
5 sections ten, twenty-four and twenty-six, article two, chapter
6 fifteen and article six, chapter twenty-nine of this code shall be
7 substantively subject to bargaining at the request of either party.

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

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

20 **§29-6A-16. Impasses; mediation.**

21 Either a state employer or the exclusive representative or
22 coalition of exclusive representatives may declare that an impasse
23 has been reached between the parties in bargaining over the wages,

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

10 **§29-6A-17. Impasses; arbitration.**

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

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

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

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

21 (1) Comparison of the wages, hours and conditions of
22 employment of the employees involved in the arbitration proceeding
23 with the wages, hours and conditions of employment of employees

1 performing similar services or requiring similar skills under
2 similar working conditions and with other employees generally in
3 public and private employment in comparable communities;

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

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

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

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

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

2 **§29-6A-18. Strikes prohibited.**

3 Strikes by state employees are prohibited at any time.

4 **§29-6A-19. Remedies for prohibited strikes.**

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

10 **§29-6A-20. Prohibited practices.**

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

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

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

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

23 (4) Discharge or otherwise discriminate against an employee

1 because he or she has signed or filed an affidavit, petition or
2 complaint or given any information or testimony under this article,
3 or because he or she has formed, joined or chosen to be represented
4 by any employee organization;

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

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

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

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

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

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

22 (2) Refuse to participate in good faith in the mediation and
23 arbitration procedures set forth in sections sixteen and seventeen

1 of this article; or

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

4 **§29-6A-21. Prohibited practices; hearings and remedies.**

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

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

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

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

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

23 (1) Subpoena witnesses and documents in accordance with

1 section one, article five, chapter twenty-nine-a of this code;

2 (2) Administer oaths and affirmations;

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

5 (4) Regulate the course of the hearing;

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

7 and

8 (6) Sequester witnesses.

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

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

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

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

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

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

1 (e) The decision of the board shall be final upon the parties
2 and shall be enforceable in circuit court by any of them. In
3 addition, the board may petition the circuit court of the county in
4 which the prohibited practice occurred to enforce its orders and to
5 grant it other relief including, but not limited to, an injunction.

6 **§29-6A-22. Payroll deductions.**

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

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

1 in the foregoing shall be construed to prevent the parties from
2 agreeing to allow for lump sum payment of dues or agreeing to
3 another arrangement.

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

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

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

1 **§29-6A-23. Financial reports to employees.**

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

16 **§29-6A-24. Public records and proceedings.**

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

20 **§29-6A-25. Severability.**

21 If any provision of this article or the application thereof to
22 any person or circumstance is held unconstitutional or invalid,
23 such unconstitutionality or invalidity shall not affect other

1 provisions or applications of the chapter, and to this end the
2 provisions of this chapter are declared to be severable.

3 **§29-6A-26. Effective Date.**

4 This article is effective July 1, 2013.

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.