

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

**Introduced**

### **Senate Bill 90**

**FISCAL  
NOTE**

BY SENATORS YOST AND MILLER

[Introduced January 13, 2016;

Referred to the Committee on Labor; then to the

Committee on the Judiciary; and then to the

Committee on Finance.]

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

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

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

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

**§29-6A-1. Legislative purpose.**

1 The Legislature of the State of West Virginia declares that the trial meet and consult  
 2 process between state departments and employee representatives has improved organizational  
 3 efficiency, enhanced the quality of work life, and led to harmonious relations between employees  
 4 and state managers. In order to build upon this success, it is the public policy of this state and  
 5 the purpose of the Legislature in the enactment of this article to promote orderly and constructive  
 6 employment relations between the state and its employees; to increase the efficiency of the state;  
 7 and to ensure the health and safety of the citizens of this state. The Legislature has determined

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

**§29-6A-2. Short title.**

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

**§29-6A-3. Definitions.**

1 The following words when used in this article have the meaning ascribed to them unless  
 2 the context clearly indicates a different meaning;

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

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

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

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

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

16 (d) "Certification" means official designation by the State Labor Relations Board that the

17 employee organization is the exclusive representative for all the employees in an appropriate  
18 bargaining unit for the purpose of collective bargaining.

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

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

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

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

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

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

41 (k) "Impasse" means the point in the process of negotiations between exclusive  
42 representatives of state employees and state employers at which either party determines that no

43 further progress toward resolving differences and concluding a collective bargaining agreement  
44 can be made.

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

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

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

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

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

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

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

6 for a term of four years, another one of the original terms shall be for a term of three years and  
7 the remaining original term shall be for a term of two years.

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

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

1 (a) The Governor shall appoint the three members of the board within sixty days of the  
2 effective date of this article. The original terms of office of members begin on July 1, 2017.

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

6 (c) All members of the board shall be eligible for reappointment. Before exercising any  
7 authority or performing any duties as a member of the board, each member shall qualify by taking  
8 and subscribing to the oath of office prescribed by Section five, Article IV of the State Constitution.

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

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

1 (a) The board shall hold at least four meetings in every fiscal year beginning July 1 and  
2 ending the following June 30. One meeting, known as the annual meeting, shall be held in July,  
3 or as soon thereafter as practicable, in the year 2017 and in July of each subsequent year. Annual  
4 meetings, as well as the three 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 statutorily required meetings,  
6 the board may, upon its own resolution or at the call of the chairperson of the board, meet at other

7 times.

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

17 (c) The members of the board shall be paid \$300 per diem, or such other amount as  
18 specified by the Legislature in appropriations, for actual time spent in the performance of duties  
19 under this article, and shall be reimbursed for actual and necessary expenses incident to the  
20 performance of their duties. The foregoing per diem and reimbursement for actual and necessary  
21 expenses shall be paid from appropriations made by the Legislature to the board.

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

1 (a) At its first annual meeting in July, or as soon thereafter as practicable, in the year 2017,  
2 and annually thereafter, the board shall elect a chairperson and other officers from its membership  
3 as the board may deem necessary or desirable. The chairperson shall serve for a one year term  
4 commencing on July 1, following the annual meeting and ending on June 30 the following year.

5 (b) The board shall employ an executive officer and other professional, administrative,  
6 clerical and other employees, including, but not limited to, mediators and hearing officers, as may  
7 be necessary to assist the board in the performance of its duties and responsibilities and  
8 consistent with legislative appropriations. The board shall be represented in any judicial  
9 proceedings pursuant to this article by the Attorney General of the State of West Virginia or his or  
10 her designee. The board shall prescribe the duties and fix the compensation and emoluments of

11 all employees. Employees of the board shall serve under the direction and control of the board  
12 or its designated representatives. The board shall provide suitable offices for the executive officer  
13 and his or her staff in or near the State Capitol Complex in Charleston, West Virginia.

**§29-6A-9. Rules.**

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

**§29-6A-10. Employee rights.**

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

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

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

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

4 (b) Labor organizations recognized by the state as the exclusive representative are



5 responsible for representing the interests of all state employees in the bargaining unit. Nothing  
6 herein may be construed to limit an exclusive representative's right to exercise its discretion to  
7 refuse to process grievances of employees that are not meritorious.

**§29-6A-12. Unit determination.**

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

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

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

1 (a) When an employee or group of employees, or any individual or employee organization  
2 acting on behalf of an employee or group of employees, files a petition with the board alleging  
3 that thirty percent of the employees in a unit are members or wish to be represented for collective  
4 bargaining by a designated representative, or wish to decertify the existing exclusive  
5 representative, the board shall investigate or conduct hearings to determine the validity of the  
6 matters contained in the petition before determining whether or not an order should be issued. If  
7 the board determines that thirty percent of the employees in an appropriate unit are members of  
8 or wish to be represented by a designated employee organization, or wish to decertify a currently

9 certified exclusive representative, the board shall order and conduct a secret ballot election.  
10 Within seven days of a request from the board, a state employer shall provide the board a list of  
11 all state employees described in the petition for recognition accompanied by notations indicating  
12 whether each employee is included or excluded from the bargaining unit. The petitioning  
13 employee organization, and any incumbent exclusive representative employee organization, shall  
14 be provided with a copy of such list. Representation elections shall be supervised by the board  
15 and shall be conducted by secret ballot at times and places selected by the board, subject to the  
16 following:

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

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

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

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

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

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

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

32 (6) In addition to any currently certified or petitioning employee organization, the ballot  
33 shall contain the names of any employee organization presenting cards signed by at least twenty  
34 percent of the employees in the appropriate unit indicating their wish to be represented for the

35 purpose of collective bargaining by the organization and the ballot shall also contain a provision  
36 allowing an employee to mark "no representation";

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

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

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

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

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

**§29-6A-14. Duty to bargain.**

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

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

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

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

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

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

10 Legislature to reject cost items in an agreement that it has approved.

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

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

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

36 relating to the classification of any position.

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

**§29-6A-16. Impasses; mediation.**

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

**§29-6A-17. Impasses; arbitration.**

1 (a) If the mediator is unable to effect settlement of the controversy within thirty days of the  
2 beginning of mediation in accordance with the provisions of the preceding section, either party  
3 may, by written notification to the other or to the board, submit the remaining differences to interest  
4 arbitration. Each party shall submit a final offer on each separate item remaining at impasse to  
5 the arbitrator and the other party. The arbitrator, following the procedures prescribed in  
6 subsection (b) of this section, shall determine that either the final offer of the employer or the final  
7 offer of the exclusive representative on each separate issue shall be incorporated into the final  
8 collective bargaining agreement: *Provided*, That the arbitrator shall not amend the offer of either  
9 party on any issue. Unless the parties have mutually agreed to retain the mediator as arbitrator,  
10 or have agreed upon another individual, the board shall submit five names of potential arbitrators  
11 to the parties. Each party shall alternately strike a name until one arbiter remains. The name of  
12 potential arbitrators shall be submitted by the board from lists provided by the American Arbitration

13 Association or the Federal Mediation and Conciliation Service.

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

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

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

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

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

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

35 (d) Not later than thirty days following appointment or at such other time as mutually  
36 agreed, the arbitrator shall transmit a decision to the board and to the parties. The parties shall  
37 execute an agreement embodying the decision of the arbitrator as to all issues which had been  
38 unresolved as well as those items mutually agreed upon. The decision of the arbitrator on matters

39 requiring an appropriation of funds is subject to approval and appropriation by the Legislature.

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

**§29-6A-18. Strikes prohibited.**

1 Strikes by state employees are prohibited at any time.

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

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

**§29-6A-20. Prohibited practices.**

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

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

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

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

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

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

16 (6) Refuse to participate in good faith in the mediation and arbitration procedures set forth



17 in sections sixteen and seventeen of this article;

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (2) Administer oaths and affirmations;

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

19 (4) Regulate the course of the hearing;

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

21 (6) Sequester witnesses.

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

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

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

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

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

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

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

**§29-6A-22. Payroll deductions.**

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

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

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

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

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

24 (e) The employer shall continue all payroll assignments authorized by an employee prior  
25 to the effective date of this article and all assignments authorized under subsection (d) of this  
26 section until the employee notifies the employer to discontinue his or her assignments in  
27 accordance with any applicable collective bargaining agreement or until the employee

28 organization ceases to be the exclusive representative of the appropriate bargaining unit.

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

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

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

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

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

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