WEST virginia legislature

**FISCAL NOTE**

2021 regular session

Introduced

House Bill 3124

By Delegates Thompson, Walker, Barach, Griffith, Diserio, Young, Zukoff and Dean

[Introduced March 12, 2021; Referred to the Committee on Government Organization then the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-1F-1, §21-1F-2, §21-1F-3, §21-1F-4. §21-1F-5, §21-1F-6, §21-1F-7, §21-1F-8, §21-1F-9, §21-1F-10, §21-1F-11, §21-1F-12, §21-1F-13, §21-1F-14, §21-1F-15, §21-1F-16, §21-1F-17, §21-1F-18, §21-1F-19, and §21-1F-20, all relating to establishing collective bargaining procedures for public employees; declaring legislative policy, defining terms, providing for designation of bargaining units and bargaining representatives; specifying the rights, duties, and powers of employers, employees, and bargaining representatives; providing procedures for negotiation and impasse; creating a Public Employees Relations Board and specifying the powers, duties, and procedures thereof; specifying election procedures for establishing bargaining units; providing for employee access to bargaining representatives; providing for collection of dues or fees by payroll deduction; requiring certain notifications be given to employees; disclosing employee information to bargaining representative; defining violations of the article; establishing requirements for notice and service of process; and providing for protection from personal liability and preservation of constitutional rights.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1F. LABOR RELATIONS ACT FOR PUBLIC EMPLOYEES.

§21-1F-1. Declaration of policy.

It is the public policy of this state and the purpose of this article to facilitate the practice of collective bargaining for public employees and their respective employers by protecting the exercise of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment; to prescribe the legitimate rights of both employees and employers in their relations; and to provide orderly and peaceful procedures to implement these purposes.

§21-1F-2. Definitions.

As used in this article, the following words or phrases have the meanings set out below, unless the context clearly indicates a different meaning:

“Arbitration” means the procedure whereby the parties involved in an impasse or grievance dispute submit their differences to a third party for a final and binding decision or as otherwise provided in this article;

“Board” means the Public Employee Relations Board established pursuant to §21-1F-5 of this code;

“Collective bargaining,” “bargain collectively,” or “negotiate” means to perform the mutual obligation of the public employer, by its representatives, and the representatives of its employees to negotiate in good faith at reasonable times and places with respect to wages, hours, and other terms and conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, with the intention of reaching an agreement, or to resolve questions arising under the agreement, and includes executing a written contract incorporating the terms of any agreement reached;

“Confidential employee” means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

“Employee organization” means an organization in which public employees participate and which exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment;

“Exclusive bargaining representative” or “exclusive representative” means an employee organization certified as the exclusive bargaining representative of a bargaining unit by the board pursuant to the provisions of this article;

“Governing body” means the Legislature, and any department, agency, board or commission of the state; any local government; or any other public body that determines the policies for operation of a political subdivision or public institution of higher education of the state;

“Impasse” means the failure of a public employer and an exclusive bargaining representative to reach agreement in the course of negotiations;

“Local government” means:

(1) Any county, municipality, town, or other local or regional political subdivision, designated as such by the Legislature; or

(2) Any county school board or other public local educational board;

“Local government employee” means any individual who is employed by a local government, except individuals exempted from the provisions of this article by §21-1F-4 of this code;

“Mediation” means a procedure in which a public employer and the exclusive bargaining representative invoke the assistance of an impartial third party to resolve an impasse;

“Professional employee” means any (1) Employee engaged in work: (A) Predominantly intellectual and varied in character rather than routine mental, manual, mechanical, or physical work; (B) involving the consistent exercise of discretion and judgment in its performance; (C) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (D) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (2) Any employee who has completed the courses of specialized intellectual instruction and study described in paragraph (D) of this definition and is performing related work under the supervision of a professional person in order to meet the qualifications described in subdivision (1) of this definition;

“Public educational employer” means a school board;

“Public employee” means any state employee or local government employee, except individuals exempted from the provisions of this article by §21-1F-4 of this code;

“Public employer” means a state agency or local government;

“State agency” means the state or any agency, division, office, department, board, commission, or institution thereof, including any public institution of higher education and any independent political subdivisions;

“State employee” means any individual who is employed by a state agency, except individuals exempted from the provisions of this article by §21-1F-4 of this code;

“Strike” means, in concerted action with others, a public employee's refusal to report to duty, or willful absence from his or her position, or stoppage of work, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment; and

“Supervisor” means an employee who devotes a majority of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees, and who has the authority, in the interest of the employer, to hire, promote, or discipline other employees or to recommend such actions effectively, but does not include individuals who perform merely routine, incidental, or clerical duties or who occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their subordinates and does not include lead employees and employees who have authority limited to assigning and directing employees.

§21-1F-3. Collective bargaining by public employees.

Public employees may:

(1) Organize, form, join, or assist any employee organization or refrain from any such activity;

(2) Negotiate collectively through representatives of their own choosing; and

(3) Engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this article or any other law of the state.

§21-1F-4. Exemptions from article.

The following public employees are excluded from the provisions of this article:

(1) Elected officials, persons appointed to fill vacancies in elected offices, and elected or appointed members of any board or commission;

(2) Representatives of a public employer, including the administrative officer, director, or chief executive officer of a public employer, or major division thereof, as well as his or her deputy, first assistant, and any nonbargaining unit supervisory employees: *Provided*, That nothing herein shall be construed to prohibit a public employer from bargaining with, and entering into a contract with, a labor organization certified to represent a separate unit composed solely of supervisors;

(3) Confidential employees;

(4) Temporary public employees employed for a period of five months or less in any 24-month period;

(5) Judicial branch employees, including judges, referees, receivers, arbiters, mediators masters, discovery commissioners, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;

(6) Patients and inmates employed, sentenced, or committed to any state or local institution; and

(7) Employees working for the Legislature.

§21-1F-5. Powers of public employers.

Unless limited by the provisions of a collective bargaining agreement or by other statutory provisions, a public employer may:

(1) Direct the work of, hire, promote, assign, transfer, demote, suspend, discharge, or terminate public employees;

(2) Determine qualifications for employment and the nature and content of personnel examinations; and

(3) When the employer is a state agency, take any action permitted by the Division of Personnel of the Department of Administration.

§21-1F-6. Duties of bargaining representative; scope of bargaining and negotiations; exemption from Open Governmental Proceedings law.

(a) The employee organization certified as the bargaining representative shall be the exclusive representative of all public employees in the bargaining unit and shall represent all public employees fairly, except that any individual employee shall have the right at any time to present a grievance specific to that employee to their public employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect and the exclusive bargaining representative has been given the opportunity to be present during the grievance process and at such adjustment.

(b) The employee organization that is an exclusive bargaining representative and the public employer may designate any individual or individuals as its representatives to engage in collective bargaining negotiations.

(c) The scope of collective bargaining between a local government and an exclusive bargaining representative of local employees shall include wages, hours, and other terms and conditions of employment. The chief executive officer of a local government shall appoint its representative in collective bargaining.

(d) The scope of collective bargaining between a state agency and an exclusive representative of state employees shall include wages, hours, and other terms and conditions of employment and shall specifically include matters within the administrative discretion of the Director of the Division of Personnel or appointing authorities; however, benefits provided by any public employee retirement program administered by the Consolidated Public Retirement Board. The chief executive officer of the agency shall select and designate the state agency's representative in collective bargaining.

(e) Negotiating sessions, including strategy meetings of public employers or exclusive bargaining representatives, mediation, and the deliberative process of arbitrators are not subject to the requirements of §6-9A-1 *et seq*. of this code.

§21-1F-7. Duty to negotiate in good faith.

The public employer and an employee organization that is the exclusive bargaining representative shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to wages, hours, and other terms and conditions of employment.

§21-1F-8. Negotiation and impasse procedures.

(a) Each state agency and exclusive representative of state employees shall comply with the following negotiation and impasse procedures unless otherwise agreed by the parties to the negotiations:

(1) Except as provided in subdivision (7) of this subsection, a request for negotiations shall be filed in writing by the exclusive representative to the agency no later than June 1 of odd-numbered years for collective bargaining agreements that are to become effective on July 1 of the following year;

(2) Negotiations shall begin no later than July 1 in the year the request was filed;

(3) If an impasse occurs during negotiations, or if no agreement is reached by the parties by October 1 in the year the request was filed, either party may submit a request for mediation to the board. The parties involved shall mutually agree upon a mediator or request the board to appoint an impartial mediator;

(4) The mediator shall provide services to the parties until the parties reach agreement, the mediator believes that mediation services are no longer helpful, or October 10, whichever occurs first. If the mediator determines that mediation services are no longer helpful or if the October 10 deadline occurs, the parties shall jointly submit the unresolved issues to final and binding arbitration. The parties shall jointly select an arbitrator or, if they are unable to agree on an arbitrator, they shall request a list of seven arbitrators from the Federal Mediation and Conciliation Service or the American Arbitration Association. Each party in turn shall strike a name from the list until only one name remains. Negotiations may continue throughout the impasse procedures;

(5) Each party shall submit a final offer on each separate item remaining at impasse to the arbitrator and the other party within 10 days of selection of the arbitrator. The arbitrator shall determine that either the final offer of the employer or the final offer of the employee organization on each separate issue shall be incorporated into the final collective bargaining agreement; however, the arbitrator shall not amend the offer of either party on any issue;

(6) The arbitrator shall: (A) Begin hearings no later than November 20 in accordance with procedures prescribed by the board; and (B) render a decision in writing no later than December 15;

(7) Negotiations following the initial certification of an employee organization as an exclusive representative of state employees shall convene within 30 days of the request of either party. Either party may invoke arbitration in accordance with the provisions of subdivisions (4), (5), and (6) any time after 90 days of the first negotiation session. Matters not requiring the approval of the Legislature shall take effect in accordance with the terms of the agreement or award of an arbitrator. Matters requiring the approval of the Legislature shall take effect as provided in the resulting legislation and appropriations act; and

(8) All time limits in this subsection may be extended by mutual agreement of the parties.

(b) A request for negotiations shall be filed in writing by an exclusive representative of employees of a local government in a timely fashion reasonably in advance of the local government's budget-making process or in accordance with any collective bargaining agreement in effect.

(c) A local government and the exclusive representative may enter into a written agreement setting forth an impasse resolution procedure. The procedure shall culminate with binding arbitration.

(d) If local government and the exclusive representative have not agreed to an impasse resolution procedure, negotiation impasses shall be subject to the following procedures:

(1) At the request of either party, the parties shall enter into mediation. The parties involved shall mutually agree upon a mediator or request the board to appoint an impartial mediator.

(2) At the request of either party, all impasses not resolved through mediation, or if the parties do not agree to mediation, the issues subject to impasse, shall be submitted to final and binding arbitration. The parties shall jointly select an arbitrator or, if they are unable to agree on an arbitrator, they shall request a list of seven arbitrators from the Federal Mediation and Conciliation Service or American Arbitration Association. Each party in turn shall strike a name from the list until only one name remains. Negotiations may continue throughout the impasse procedures.

(e) In making any decision under the impasse procedures authorized by this section for any public employer, the panel shall give weight to the following factors:

(1) The lawful authority of the public employer;

(2) Stipulations of the parties;

(3) The interests and welfare of the public;

(4) The financial ability of the employer to meet the costs of any items to be included in the contract;

(5) Comparison of wages, hours, and terms and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and terms and conditions of employment of other persons performing similar services in the public and private sectors;

(6) The average consumer prices for goods and services, commonly known as the cost of living;

(7) The overall compensation presently received by the employees involved in the arbitration including wages, insurance benefits, vacations, holidays, and similar benefits;

(8) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; and

(9) Such other factors that are normally or traditionally taken into consideration in the determination of wages, hours, and terms and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in public service or in private employment.

(f) The expenses of the arbitrator shall be borne equally by the parties.

(g) The circuit court for the locality in which a dispute arose or in which a majority of the affected employees reside may review an award of the arbitrator or an award of an arbitrator in a grievance arbitration, when the arbitrator was without or exceeded his or her jurisdiction; the order is not supported by competent, material, and substantial evidence on the whole record; or the order was procured by fraud, collusion or other similar and unlawful means. The pendency of a proceeding for review shall not automatically stay the order of the arbitrator. Proceedings for judicial review of an arbitrator’s final determination or award shall be governed by the provisions of §29A-5-4 of this code.

§21-1F-9. Funding for implementation of agreements.

(a) After a negotiated agreement has been agreed to by both parties, or a final and binding arbitration decision has been rendered in pursuant to §21-1F-9 of this code, the chief officer of the public employer shall submit a request for funds necessary to implement the agreement and for approval of any other matter requiring the approval of the governing body within 15 days after either (1) The date on which the parties finalize the agreement or (2) The date on which the arbitration decision is issued, unless otherwise specified in this section. If the governing body is not in session at the time, then the submission shall be within five days after it next convenes.

(b) The governing body may only approve or reject the submission as a whole.

(c) If the governing body rejects the submission of the public employer, either party may reopen negotiations.

(d) The parties may specify that those provisions of the agreement not requiring action by a governing body shall be effective and operative in accordance with the terms of the agreement.

(e) Upon the expiration of any agreement, the terms of such agreement shall remain in effect until superseded by a new agreement.

§21-1F-10. Public Employee Relations Board created; powers.

(a) The Public Employee Relations Board is established within the Division of Labor of the Department of Commerce. The board shall be composed of three members, of which:

(1) One member shall be representative of management;

(2) One member shall be representative of labor or a labor organization; and

(3) One member shall be representative of the public, who shall also serve as chair of this board.

The Governor shall make initial nominations for the board members by December 1, 2021, and these nominations shall be subject to confirmation by the Senate.

(b) All members shall be appointed by the Governor for a term of three years or until their successors have been appointed and qualified.

(c) A minimum of two members shall be required to constitute a quorum to conduct official business of the board in a contested case.

(d) Members of the board shall be paid the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Funding for the costs of compensation and expenses of the members shall be provided by the Division of Labor.

(e) The board shall:

(1) Administer the provisions of this article; and

(2) Propose rules for legislative approval, in accordance with the provisions of §29B-3-1 *et seq*. of this code, to implement and carry out the provisions of this article.

(f) The board shall have the power to:

(1) Sue and be sued, implead and be impleaded, and complain and defend in all courts;

(2) Adopt, use, and amend a common seal;

(3) Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this article;

(4) Employ, at its discretion, such employees as may be necessary and fix their compensation to be payable from funds made available to the board. Legal services for the board shall be provided by the Attorney General; and

(5) Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers, and other documents before the board or any agent of the board; and administer oaths and take testimony thereunder; and

(6) Do all other acts necessary or advisable to carry out the purposes of this article.

(g) In addition, the board has the following discretionary powers:

(1) The board may authorize any board member, or employ a person as a hearing examiner, to hold and conduct hearings, issue subpoenas, administer oaths and take testimony thereunder, and submit recommended decisions, subject to final decision by the board;

(2) In cases of refusal to obey a subpoena issued by the board, the board may apply to the circuit court of the locality where the person refusing to obey such subpoena may be found to enforce the subpoena and any failure to obey such order shall be punished by the court as a contempt thereof; and

(3) The board may enter into consent agreements or other methods of informal disposition allowed under §29A-5-1 of this code. Consent agreements to which the board is a party shall include findings of fact and may include an admission or a finding of a violation.

§21-1F-11. Board procedures.

(a) Proceedings against a party alleging a violation of §21-1F-17 of this code shall be commenced by filing a charge with the board within six months of the alleged violation, or acquiring knowledge thereof, and causing a copy of the charge to be served upon the accused party in the manner of an original notice as provided in §21-1F-18 of this code. The accused party shall have 10 days within which to file a written answer to the charge. The board may conduct a preliminary investigation of the alleged violation, and if the board determines that the charge has no legal or factual basis, it may dismiss the charge. If it does not dismiss the charge, the board shall promptly thereafter set a time and place for a hearing in the locality where the alleged violation occurred or in the locality where the board maintains its principal office. The parties shall be permitted to be represented by counsel or other designated representative, summon witnesses, and request the board to subpoena witnesses and the production of records on the requester's behalf. Compliance with the technical rules of pleading and evidence shall not be required.

(b) The board shall provide for an official written transcript to report the proceedings and the board shall affix the reasonable amount of compensation for such service, which amount shall be taxed as other costs.

(c) If the board designates a hearing officer to conduct any hearing, the hearing officer shall submit a recommended decision to the board, with detailed findings of fact and conclusions of law. The board may adopt, reject, or modify the decision and shall state the board’s reasons for doing so in writing.

(d) The board shall file its findings of fact and conclusions of law. If the board finds that the party accused has violated any provision of this article, the board may issue an order directing the party to cease and desist engaging in violation and may order such other affirmative relief as is necessary to remedy the violation. The board may petition the circuit court for the locality in which the board maintains its principal office, the locality in which the public employer maintains its principal office, or the locality in which the charge arose for enforcement of its orders.

(e) Any party aggrieved by any decision or order of the board may petition for judicial review as provided in §29A-5-4, except that when the petitioner is a state agency, the petition shall be filed in the Circuit Court of Kanawha County. The board and all parties of record in the proceedings before the board shall be named as parties. The service of legal process, summons, or subpoena upon an officer or agent of the employee organization in his or her capacity as such shall constitute service upon such employee organization.

§21-1F-12. Determination of appropriate bargaining unit.

(a) Any determination by the board of an appropriate bargaining unit shall be made upon a petition being filed by an employee organization or in accordance with this section. Any disputes about the placement of employees in bargaining units established in subsection (c) of this section shall be resolved by the board.

(b) When a determination of an appropriate unit is necessary, within 30 days of receipt of a petition, the board shall conduct a public hearing, receive written or oral testimony, and promptly thereafter file an order defining the appropriate bargaining unit. In defining the unit, the board shall take into consideration, along with other relevant factors, the desires of the employees; the community of interest including such factors as the similarity of duties, skills, and working conditions of the employees involved; wages, hours, and other working conditions of the public employees; the efficiency of operations of the public employer; the administrative structure of the public employer; the recommendation of the parties; and the history of collective bargaining in other public sector jurisdictions. Nothing herein shall prohibit the petitioning employee organization and the public employer from entering into a consent agreement on the appropriate unit in lieu of a hearing.

(c) Bargaining units of state employees shall include employees in broad classification categories across the various agencies and departments of the executive branch. There shall be bargaining units for each of the following:

(1) Administrative services;

(2) Education and media services;

(3) Engineering and technology;

(4) Health and human services counseling services and health care compliance;

(5) Health and human services direct services and social work;

(6) Health and human services health care technology, rehabilitation therapies, pharmaceutical service, and nurse/physician assistant service;

(7) Health and human services physician service, psychological service, and dental service;

(8) Natural resources and applied science;

(9) Security guards and protective services;

(10) Corrections;

(11) Juvenile justice;

(12) Probation and parole;

(13) Law enforcement;

(14) Firefighters; and

(15) Other public safety services not described in another subdivision of this subsection; and

(16) Trades and operations.

(d) Each state-controlled enterprise, independent political subdivision, authority, or agency employing public employees not covered by in the classified service as delineated by §29-6-3 of this code, shall have separate bargaining units of such employees as determined by the board.

(e) Each public institution of higher education may have separate bargaining units or may have a bargaining unit to represent all employees for the branches of the institution statewide as determined by the board;

(f) Upon request of the exclusive representative involved, there shall be bargaining for state employees by a coalition of all or some exclusive representatives, irrespective of a bargaining unit of state employees described in subsection (c) of this section, concerning wages, fringe benefits, and those matters that have applicability to more than one bargaining unit of state employees. Upon request of the exclusive representative, there shall be supplementary bargaining on behalf of public employees in a bargaining unit or part of a bargaining unit concerning matters uniquely affecting those public employees, or consolidated bargaining between two or more bargaining units concerning matters affecting those public employees.

§21-1F-13. Certification and decertification of exclusive bargaining representative; representation elections.

(a) Board certification of an employee organization as the exclusive bargaining representative of a bargaining unit shall be upon a petition filed with the board by a public employee or an employee organization and an election pursuant to §21-1F-14 of this code or upon administratively acceptable evidence that a majority of bargaining unit employees authorized an employee organization to represent them for the purposes of collective bargaining.

(b) A petition of an employee organization for a representation election shall be accompanied by administratively acceptable evidence that 30 percent of the public employees in an appropriate bargaining unit are members of the employee organization or have authorized it to represent them for the purposes of collective bargaining. A petition by an employee organization for certification without an election shall be accompanied by administratively acceptable evidence alleging that a majority of the public employees in an appropriate bargaining unit are members of the employee organization or have authorized it to represent them for the purposes of collective bargaining. Upon validating the evidence that a majority of the public employees in a bargaining unit are members of the employee organization or have authorized it to represent them for the purposes of collective bargaining, the board shall certify the employee organization as the exclusive bargaining representative of the bargaining unit.

(c) For the purpose of decertification, the petition of a public employee or employee organization shall allege that an employee organization that has been certified or recognized as the exclusive bargaining representative of an appropriate unit does not represent a majority of such public employees and that the petitioners do not want to be represented by an employee organization or seek certification of a different employee organization. Such petition shall be accompanied by administratively acceptable evidence that 50 percent of such employees do not want to be represented by the exclusive representative employee organization or seek certification of a different employee organization. Upon validation of the 50 percent showing of interest, the board shall conduct a secret ballot election in accordance with this article.

(d) The board shall investigate the allegations of any petition and shall give reasonable notice of the receipt of such petition to all public employees, employee organizations, and public employers named or described in such petitions or interested in the representation question. When necessary, the board shall call an election under §21-1F-14 of this code within 30 days of receipt of a petition unless it finds that less than 30 percent of the public employees in the unit appropriate for collective bargaining support the petition for certification, or it finds that less than 50 percent of employees in the unit appropriate for collective bargaining support the petition for decertification, or the appropriate bargaining unit has not been determined pursuant to §21-1F-12 of this code.

(e) For purposes of this article, administratively acceptable evidence to support a petition for certification without election, for a certification through a representation election, or for a decertification election may consist of a combination of membership cards, evidence of dues payment, petitions to be represented by a bargaining representative, or other evidence of a public employee's desire to be represented by an employee organization for the purposes of collective bargaining. The determination by the board of the sufficiency of a showing of majority support or sufficiency of support for a representation election shall not be subject to challenge by any person, employee organization, or public employer.

(f) The hearing and appeal procedures shall be the same as provided in §21-1F-11 of this code.

§21-1F-14. Elections.

(a) Whenever a petition for an election is filed by an employee or employee organization containing the signatures of at least 30 percent of the public employees in an appropriate bargaining unit, or containing the signatures of at least 50 percent of the public employees in an appropriate unit in the case of decertification, the board shall conduct a secret ballot representation election to determine whether the public employees in the appropriate bargaining unit wish to be represented by an exclusive bargaining representative. The ballot shall contain the names of the petitioning employee organization, any employee organization submitting within 10 days of the initial petition a petition containing signatures of at least 30 percent of the public employees within the appropriate bargaining unit, and any incumbent labor organization. The ballot shall also contain a choice of no representation.

(b) If none of the choices on the ballot receives the vote of a majority of the public employees voting, the board shall, within 30 days, conduct a run-off election among the two choices receiving the greatest number of votes.

(c) Upon written objections filed by any party to the election within 14 days after notice of the results of the election, if the board finds that misconduct or other circumstances prevented the public employees eligible to vote from freely expressing their preferences, the board may invalidate the election and hold a second or subsequent election for the public employees.

(d) Upon completion of a valid election in which the majority choice of the bargaining unit employees voting is determined, the board shall certify the results of the election and shall give reasonable notice to all employee organizations listed on the ballot, the public employers, and the public employees in the appropriate bargaining unit. An employee organization that is the majority choice of the bargaining unit employees voting in a valid election under this section shall be certified by the board as the exclusive bargaining representative for the bargaining unit employees.

(e) A petition for decertification or certification of an exclusive bargaining representative shall not be considered by the board for a period of one year from the date of the certification or noncertification of an exclusive bargaining representative or during the duration of a collective bargaining agreement not to exceed three years. A petition for decertification shall not be considered during the duration of a collective bargaining agreement unless the collective bargaining agreement has been in effect for more than three years or the petition for decertification is filed not more than 210 days and not less than 180 days prior to the expiration of the collective bargaining agreement.

§21-1F-15. Bargaining unit dues or fees; payroll deductions.

(a) The collective bargaining agreement negotiated between the employer and the exclusive bargaining representative shall also include a provision for the payroll deduction of fees and dues to such labor organization. Where an employee is in a bargaining unit represented by an exclusive representative, the public employer shall honor a payroll deduction authorization only for dues and fees paid to the exclusive representative. The public employer shall negotiate only with the exclusive bargaining representative on matters contained in this article. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession.

(b) The public employer shall honor the terms of employees' authorizations for payroll deductions to an exclusive representative made in any written form, subject to the provisions of the Uniform Electronic Transactions Act, §39A-1-1 *et seq*. of this code. Unless the exclusive representative otherwise directs, the public employees' requests to cancel or change authorizations for payroll deductions shall be directed to the exclusive representative and not to the public employer. The exclusive bargaining representative shall be responsible for processing these requests in accordance with the terms of the authorization. An exclusive representative that certifies that it has and will maintain individual public employees' authorizations shall not be required to provide a copy to the public employer unless a dispute arises about the existence or terms of that authorization. The exclusive bargaining representative shall indemnify the public employer for any disputed deductions made by a public employee for deductions in reliance on that authorization.

(c) Not later than 10 calendar days after the hire of a public employee, a public employer shall provide the following contact information to such employee's exclusive bargaining representative, in an editable electronic format agreed to by the exclusive bargaining representative: name, job title, worksite location, home address, work telephone number, and any home telephone number, personal cell phone number, and personal email address on file with the public employer.

(d) Records of public employee contact information specified in this section are not public records and are exempt from production under the West Virginia Freedom of Information Act, §29B-1-1 *et seq*. of this code.

§21-1F-16. Employee access to bargaining representative.

(a) A public employer shall provide an exclusive bargaining representative reasonable access to the public employees that the exclusive bargaining representative represents. Such access includes:

(1) The right to meet with employees during the workday to discuss and investigate grievances and other workplace issues;

(2) The right to conduct worksite meetings during meal periods and other breaks, and before and after the workday; and

(3) The right to address newly hired employees on paid time for no less than 30 minutes during new employee orientations, within 30 days of hire or, if the public employer does not conduct new employee orientations, at individual or group meetings of new employees within 30 days of hire. Attendance at such orientations or meetings shall be mandatory for newly hired employees. Managers, supervisors, and other non-bargaining unit employees shall not attend the exclusive bargaining representative's presentation. The public employer shall give the exclusive bargaining representative not less than 10 days' written notice of such an orientation, except shorter notice may be provided where there is an urgent need critical to the public employer's operations that was not reasonably foreseeable by the public employer. The structure and manner of such access to new employee orientations shall be determined through mutual agreement.

(b) Exclusive bargaining representatives shall have the right to communicate with bargaining unit members concerning collective bargaining; the administration of collective bargaining agreements, grievances, and other workplace issues; and internal union matters via the employer's email systems or other communication systems commonly used at the workplace.

§21-1F-17. Prohibited conduct.

(a) No public employer or exclusive bargaining representative shall refuse to negotiate in good faith with respect to the scope of negotiations as established in §21-1F-7 of this code.

(b) No public employer or its designated representative shall:

(1) Interfere with, restrain, or coerce public employees in the exercise of rights granted by this article;

(2) Dominate or interfere in the administration of any employee organization;

(3) Encourage or discourage membership in any employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment;

(4) Discharge or discriminate against any public employee because he or she has filed an affidavit, petition, or complaint or given any information or testimony under this article, or because he or she has formed, joined, or chosen to be represented by any exclusive bargaining representative;

(5) Refuse to negotiate collectively with representatives of any employee organization that is an exclusive bargaining representative as required in this article;

(6) Deny the rights accompanying certification as the exclusive representative granted in this article;

(7) Refuse to participate in good faith in any agreed-upon impasse procedures or those set forth in this article;

(8) Refuse to reduce a collective bargaining agreement to writing and sign such agreement; or

(9) Disclose to any private entity, other than the exclusive representative, personally identifiable information about public employees within a bargaining unit that is exempt from disclosure, including the contact information specified in §21-1F-15 of this code.

(c) No employee organization or its agents shall:

(1) Interfere with, restrain, or coerce a public employee with respect to rights granted in this article or with respect to selecting an exclusive representative;

(2) Fail to represent an employee who is in a bargaining unit exclusively represented by the employee organization fairly and without discrimination provided such failure is willful or deliberate;

(3) Refuse to bargain collectively with the public employer as required in this article;

(4) Refuse to participate in good faith in any agreed-upon impasse procedures or procedures set forth in this article; or

(5) Violate the impasse provisions of this article, which hereby are made applicable to public employers, public employees, and exclusive representatives.

§21-1F-18. Notice.

Any notice required under the provisions of this article shall be in writing, but service thereof shall be sufficient if mailed by restricted certified mail, return receipt requested, addressed to the last-known address of the parties, unless otherwise provided in this article or by the rules of the board, which rules shall provide for the electronic service of documents. Refusal of restricted certified mail by any party shall be considered service. Prescribed time periods shall commence from the date of the receipt of the notice. Any party may at any time execute and deliver an acceptance of service in lieu of a mailed notice.

§21-1F-19. Protection against personal liability.

Nothing in this article shall be construed to make any individual or his assets liable for any judgment against a public employer or an exclusive bargaining representative.

§21-1F-20. Article not to limit constitutional rights.

Nothing in this article shall be construed to limit any person's right to freedom of speech, to association, or to petition or seek redress from the government.

NOTE: The purpose of this bill is to establish collective bargaining procedures for public employees and to define the relative rights and duties of employers, employees, and bargaining representatives.

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