

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3124

**FISCAL
NOTE**

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DISERIO, YOUNG, ZUKOFF AND DEAN

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

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

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

§21-1F-2. Definitions.

1 As used in this article, the following words or phrases have the meanings set out below,

2 unless the context clearly indicates a different meaning:

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

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

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

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

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

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

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

27 “Impasse” means the failure of a public employer and an exclusive bargaining

28 representative to reach agreement in the course of negotiations;

29 “Local government” means:

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

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

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

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

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

50 “Public educational employer” means a school board;

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

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

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

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

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

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

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

1 Public employees may:

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

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

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

§21-1F-4. Exemptions from article.

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

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

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

9 (3) Confidential employees;

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

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

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

17 (7) Employees working for the Legislature.

§21-1F-5. Powers of public employers.

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

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

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

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

§21-1F-6. Duties of bargaining representative; scope of bargaining and negotiations;

exemption from Open Governmental Proceedings law.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 procedures;

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

27 (6) The arbitrator shall: (A) Begin hearings no later than November 20 in accordance with
28 procedures prescribed by the board; and (B) render a decision in writing no later than December
29 15;

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

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

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

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

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

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

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

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

58 (1) The lawful authority of the public employer;

59 (2) Stipulations of the parties;

60 (3) The interests and welfare of the public;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (1) One member shall be representative of management;

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

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

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

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

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

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

18 (e) The board shall:

19 (1) Administer the provisions of this article; and

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

22 (f) The board shall have the power to:

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

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

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

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

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

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

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

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

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

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

§21-1F-11. Board procedures.

1 (a) Proceedings against a party alleging a violation of §21-1F-17 of this code shall be
2 commenced by filing a charge with the board within six months of the alleged violation, or
3 acquiring knowledge thereof, and causing a copy of the charge to be served upon the accused

4 party in the manner of an original notice as provided in §21-1F-18 of this code. The accused party
5 shall have 10 days within which to file a written answer to the charge. The board may conduct a
6 preliminary investigation of the alleged violation, and if the board determines that the charge has
7 no legal or factual basis, it may dismiss the charge. If it does not dismiss the charge, the board
8 shall promptly thereafter set a time and place for a hearing in the locality where the alleged
9 violation occurred or in the locality where the board maintains its principal office. The parties shall
10 be permitted to be represented by counsel or other designated representative, summon
11 witnesses, and request the board to subpoena witnesses and the production of records on the
12 requester's behalf. Compliance with the technical rules of pleading and evidence shall not be
13 required.

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

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

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

27 (e) Any party aggrieved by any decision or order of the board may petition for judicial
28 review as provided in §29A-5-4, except that when the petitioner is a state agency, the petition
29 shall be filed in the Circuit Court of Kanawha County. The board and all parties of record in the

30 proceedings before the board shall be named as parties. The service of legal process, summons,
31 or subpoena upon an officer or agent of the employee organization in his or her capacity as such
32 shall constitute service upon such employee organization.

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

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

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

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

19 (1) Administrative services;

20 (2) Education and media services;

21 (3) Engineering and technology;

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

- 23 (5) Health and human services direct services and social work;
24 (6) Health and human services health care technology, rehabilitation therapies,
25 pharmaceutical service, and nurse/physician assistant service;
26 (7) Health and human services physician service, psychological service, and dental
27 service;
28 (8) Natural resources and applied science;
29 (9) Security guards and protective services;
30 (10) Corrections;
31 (11) Juvenile justice;
32 (12) Probation and parole;
33 (13) Law enforcement;
34 (14) Firefighters; and
35 (15) Other public safety services not described in another subdivision of this subsection;
36 and
37 (16) Trades and operations.
38 (d) Each state-controlled enterprise, independent political subdivision, authority, or agency
39 employing public employees not covered by in the classified service as delineated by §29-6-3 of
40 this code, shall have separate bargaining units of such employees as determined by the board.
41 (e) Each public institution of higher education may have separate bargaining units or may
42 have a bargaining unit to represent all employees for the branches of the institution statewide as
43 determined by the board;
44 (f) Upon request of the exclusive representative involved, there shall be bargaining for
45 state employees by a coalition of all or some exclusive representatives, irrespective of a
46 bargaining unit of state employees described in subsection (c) of this section, concerning wages,
47 fringe benefits, and those matters that have applicability to more than one bargaining unit of state
48 employees. Upon request of the exclusive representative, there shall be supplementary

49 bargaining on behalf of public employees in a bargaining unit or part of a bargaining unit
50 concerning matters uniquely affecting those public employees, or consolidated bargaining
51 between two or more bargaining units concerning matters affecting those public employees.

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

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

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

17 (c) For the purpose of decertification, the petition of a public employee or employee
18 organization shall allege that an employee organization that has been certified or recognized as
19 the exclusive bargaining representative of an appropriate unit does not represent a majority of
20 such public employees and that the petitioners do not want to be represented by an employee
21 organization or seek certification of a different employee organization. Such petition shall be

22 accompanied by administratively acceptable evidence that 50 percent of such employees do not
23 want to be represented by the exclusive representative employee organization or seek
24 certification of a different employee organization. Upon validation of the 50 percent showing of
25 interest, the board shall conduct a secret ballot election in accordance with this article.

26 (d) The board shall investigate the allegations of any petition and shall give reasonable
27 notice of the receipt of such petition to all public employees, employee organizations, and public
28 employers named or described in such petitions or interested in the representation question.
29 When necessary, the board shall call an election under §21-1F-14 of this code within 30 days of
30 receipt of a petition unless it finds that less than 30 percent of the public employees in the unit
31 appropriate for collective bargaining support the petition for certification, or it finds that less than
32 50 percent of employees in the unit appropriate for collective bargaining support the petition for
33 decertification, or the appropriate bargaining unit has not been determined pursuant to §21-1F-
34 12 of this code.

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

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

§21-1F-14. Elections.

1 (a) Whenever a petition for an election is filed by an employee or employee organization
2 containing the signatures of at least 30 percent of the public employees in an appropriate

3 bargaining unit, or containing the signatures of at least 50 percent of the public employees in an
4 appropriate unit in the case of decertification, the board shall conduct a secret ballot
5 representation election to determine whether the public employees in the appropriate bargaining
6 unit wish to be represented by an exclusive bargaining representative. The ballot shall contain
7 the names of the petitioning employee organization, any employee organization submitting within
8 10 days of the initial petition a petition containing signatures of at least 30 percent of the public
9 employees within the appropriate bargaining unit, and any incumbent labor organization. The
10 ballot shall also contain a choice of no representation.

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

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

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

25 (e) A petition for decertification or certification of an exclusive bargaining representative
26 shall not be considered by the board for a period of one year from the date of the certification or
27 noncertification of an exclusive bargaining representative or during the duration of a collective
28 bargaining agreement not to exceed three years. A petition for decertification shall not be

29 considered during the duration of a collective bargaining agreement unless the collective
30 bargaining agreement has been in effect for more than three years or the petition for
31 decertification is filed not more than 210 days and not less than 180 days prior to the expiration
32 of the collective bargaining agreement.

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

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

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

21 (c) Not later than 10 calendar days after the hire of a public employee, a public employer

22 shall provide the following contact information to such employee's exclusive bargaining
23 representative, in an editable electronic format agreed to by the exclusive bargaining
24 representative: name, job title, worksite location, home address, work telephone number, and any
25 home telephone number, personal cell phone number, and personal email address on file with
26 the public employer.

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

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

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

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

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

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

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

§21-1F-17. Prohibited conduct.

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

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

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

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

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

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

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

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

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

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

21 (9) Disclose to any private entity, other than the exclusive representative, personally

22 identifiable information about public employees within a bargaining unit that is exempt from
23 disclosure, including the contact information specified in §21-1F-15 of this code.

24 (c) No employee organization or its agents shall:

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

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

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

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

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

§21-1F-18. Notice.

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

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

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

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

1 Nothing in this article shall be construed to limit any person's right to freedom of speech,

2 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.