

FIRST REGULAR SESSION

# SENATE BILL NO. 120

## 91ST GENERAL ASSEMBLY

INTRODUCED BY SENATORS GOODE, SCHNEIDER, CARTER AND BLAND.

Pre-filed December 1, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

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### AN ACT

To repeal sections 105.500, 105.510, 105.520, 105.525 and 105.530, RSMo 2000, and to enact in lieu thereof nine new sections relating to good faith employee negotiations, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 105.500, 105.510, 105.520, 105.525 and 105.530, RSMo 2000, are repealed and nine new sections enacted in lieu thereof, to be known as sections 37.040, 105.500, 105.510, 105.520, 105.525, 105.530, 105.535, 105.540 and 105.545, to read as follows:

**37.040. 1. The commissioner of administration shall appoint a chief negotiator to serve within the office of administration to represent the state in any negotiations and the administration of all labor contracts entered into by the state pursuant to the provisions of sections 105.500 to 105.545, RSMo. The commissioner of the office of administration may employ personnel to assist the chief negotiator.**

**2. The chief negotiator shall:**

**(1) Negotiate or supervise the negotiations of labor contracts on a statewide basis;**

**(2) Be responsible for administration of all collective bargaining agreements;**

**(3) Be vested with authority on all mandatory topics of bargaining to negotiate the contracts; and**

**(4) Prepare an annual report, including recommendations, to the governor and general assembly regarding wages, hours, and conditions of employment.**

105.500. Unless the context otherwise requires, the following words and phrases mean:

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

(1) "Appropriate unit" means a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned;

**(2) "Collective bargaining", "to negotiate in good faith", or "good faith negotiations", to perform the mutual obligation of the public body, 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. This includes executing a written contract incorporating the terms of any agreement reached. The obligation to bargain collectively does not mean that either party is compelled to agree to a proposal nor does it require the making of a concession;**

**(3) "Confidential employee", any public employee who works in the personnel offices of a public body and deals with information to be used by the public body in collective bargaining, or any employee who works in a close, continuing relationship with public officers or representatives personally participating in employee negotiations on behalf of the employer, including their personal secretaries;**

[(2)] **(4) "Exclusive bargaining representative" means an organization which has been designated or selected by a majority of employees in an appropriate unit as the representative of such employees in such unit for purposes of collective bargaining;**

**(5) "Professional employee", any employee engaged in work predominantly intellectual and varied in character rather than routine mental, manual, mechanical, or physical work; involving the consistent exercise of discretion and judgment in its performance; of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and 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 any employee who has completed the course of specialized intellectual instruction and study described above and is performing related work under the supervision of a professional person to qualify to become a professional employee as defined above;**

[(3)] **(6) "Public body" means the state of Missouri, or any officer, agency, department, bureau, division, board or commission of the state, or any other political subdivision of or within the state[.], including public school systems and public higher educational systems;**

**(7) "Supervisor", an employee who devotes a substantial amount 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, employees who participate in peer review, employee involvement programs or occasional employee evaluation programs.**

105.510. **1.** Employees, except [police,] deputy sheriffs, Missouri state highway patrolmen, Missouri national guard[, all teachers of all Missouri schools, colleges and universities], of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing. No such employee shall be discharged or discriminated against because of his exercise of such right, nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a labor organization, except that the above excepted employees have the right to form benevolent, social, or fraternal associations. Membership in such associations may not be restricted on the basis of race, creed, color, religion or ancestry.

**2. (1) Public employees may refuse to join or participate in the activities of an employee organization, including the payment of any dues, fees or assessments or service fees of any type, except to the extent that agreements between the public body and the representative require, as a condition of employment, the payment of a service fee in lieu of, and in an amount not greater than, dues which are payable by members of the employee organization to cover the cost of negotiation, contract administration and other activities of the employee organization which are germane to its functions as the representative. The representative shall, as a condition of receiving such service fees, provide the following protections to persons required to pay such fees who object to paying all or a portion thereof:**

**(a) Notice, in writing, of the fee which will be payable, which may be expressed in a dollar amount or a percentage of the dues payable by members, and the basis upon which the representative has determined such fee;**

**(b) An opportunity to challenge such determination; and**

**(c) Escrowing of any portion of the service fee paid by a challenging employee which is reasonably in dispute pending the determination.**

**(2) An agreement may require the payment of a service fee commencing thirty days after the beginning of employment or the effective date of such agreement,**

whichever is later.

**(3) The agreement entered into between the employer and the representative shall include a provision for the checkoff of initiation fees and dues to the representative or the payment of a service fee in lieu thereof as authorized by this section.**

**3. The following public employees shall be excluded from the provisions of this act:**

**(1) Elected officials and persons appointed to fill vacancies in elected offices, and members of any board or commission with respect to service on such board or commission;**

**(2) Representatives of a public body, including the administrative officer, director or chief executive officer of a public body, or major division thereof as well as his or her deputy, first assistant and any supervisory employees;**

**(3) Confidential employees;**

**(4) Students working as part-time public employees twenty hours per week or less who are engaged in academically related employment as a teaching, research or service assistant;**

**(5) Temporary public employees employed for a fixed period of four months or less;**

**(6) Judges of the supreme court, judges of the court of appeals, circuit judges and associate circuit judges;**

**(7) Employees of any legislative body of the public employer whose principal duties are directly related to the legislative functions of the body;**

**(8) Patients and inmates who are employed by any state or local institution to which they are sentenced or committed.**

105.520. **1.** Whenever such proposals are presented by the exclusive bargaining representative to a public body, the public body or its designated representative or representatives shall meet, confer [and], discuss **and negotiate in good faith** such proposals relative to salaries and other conditions of employment of the employees of the public body with the labor organization which is the exclusive bargaining representative of its employees in a unit appropriate. Upon the completion of [discussions] **good faith negotiations**, the results shall be reduced to writing and be presented to the [appropriate] **executive branch of the state or the** administrative[, legislative] or [other] governing body **of a political subdivision for adoption, modification or rejection** in the form of [an] **a contract**, ordinance, resolution, [bill] or other form **as** required for adoption, modification or rejection.

**2. Any bargaining unit or exclusive representative of an appropriate unit of a public body other than the state recognized prior to January 1, 2001, shall continue to**

be recognized as appropriate for purposes of sections 105.500 to 105.545. Bargaining units of public bodies other than the state established between January 1, 2001, and the effective date of the rules of the board of mediation shall continue to be recognized only if the exclusive representative was recognized through a union representation election conducted by the board of mediation. Exclusive representatives of state bargaining units certified prior to the effective date of the rules of the board shall continue to be recognized until board certification of an employee organization as the exclusive representative of a majority of employees in the preexisting bargaining unit in accordance with the procedures of sections 105.500 to 105.545. A state employee included in a bargaining unit established pursuant to this section shall no longer be in an appropriate preexisting bargaining unit upon the certification of an election by the board in accordance with section 105.525.

3. Nothing in sections 105.500 to 105.545 shall be construed to annul or modify any collective bargaining agreement entered into between a public body other than the state and the exclusive representative of an appropriate unit of that public body prior to the effective date of sections 105.500 to 105.545. Collective bargaining agreements entered into between the state and exclusive representative shall continue to apply to an employee until the employee is no longer in a preexisting bargaining unit represented by the exclusive representative. In any school year that a collective bargaining agreement as defined in this act is in force between a school district and the exclusive representative of its teachers the provisions of section 165.016, RSMo, shall not apply to such district.

4. The board determination of an appropriate bargaining unit of a public body other than the state shall be upon petition filed by an employee organization.

5. Within thirty 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, wages, hours, and other working conditions of the public employees; the effect of over-fragmentation; 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. Any bargaining unit of a public body other than the state consisting solely of uniformed firefighters or uniformed police officers shall be presumptively appropriate. The board determination of an appropriate unit shall not be subject to judicial review.

6. The board shall determine the appropriate placement of occupational classifications in the statewide bargaining units.

105.525. **1.** Issues with respect to [appropriateness of bargaining units and] majority representative status shall be resolved by the state board of mediation. [In the event that the appropriate administrative body or any of the bargaining units shall be aggrieved by the decision of the state board of mediation, an appeal may be had to the circuit court of the county where the administrative body is located or in the circuit court of Cole County.] The state board of mediation shall use the services of the state hearing officer in all contested cases.

**2. When a petition is filed by an employee or employee organization containing the signatures of at least thirty percent of the employees in an appropriate unit, the board shall conduct a secret ballot representation election. The ballot shall contain the name of any employee organization proposed in the petition containing signatures of at least ten percent of the public employees within the appropriate unit and a choice of no representation.**

**3. If none of the choices receive a majority of the employees voting, the board shall conduct a runoff election among the two choices receiving the greatest number of votes within fifteen days unless objections are timely filed in accordance with this section in which case the runoff election shall be conducted within fifteen days of the board's determination of the validity of such objections.**

**4. Upon written objections filed by any party within ten days after notice of the results of the election, the board may invalidate the election and hold a subsequent election if the board finds that misconduct or other circumstances prevented the employees from freely expressing their preferences.**

**5. Upon completion of a valid election, the board shall certify an exclusive bargaining representative which is the majority choice of the employees voting and give notice to all interested parties.**

**6. 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 unless the collective bargaining agreement has been in effect for more than three years or the petition for decertification is filed not more than two hundred ten days and not less than one hundred eighty days prior to the expiration of the collective bargaining agreement.**

**7. When a petition of a public employee is filed containing at least thirty percent of the signatures that allege that a certified or recognized employee organization does not represent a majority of such public employees, and that the petitioners do not want to be represented by any employee organization, or seek certification of a different employee organization, the board shall give notice to interested parties and call an election within thirty days of receipt of a petition unless it finds that less than thirty**

percent of the public employees in the appropriate unit support the petition for decertification.

**8. The board of mediation shall adopt rules and regulations pertaining to the following:**

- (1) The certification and decertification of exclusive bargaining representatives;**
- (2) Impasse procedures;**
- (3) Grievance procedures;**
- (4) The payment of fees and assessments;**
- (5) The holding of hearings, administering of oaths, receiving of evidence and examining of witnesses;**
- (6) The collection of data relating to wages, hours and benefits of public employees;**
- (7) The maintenance of a list of qualified mediators and arbitrators and respective compensation rates of such persons;**
- (8) The enforcement of good faith negotiation rights as provided pursuant to sections 105.500 to 105.545; and**
- (9) Such other matters necessary to implement the provisions of this act.**

**9. (1) Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.**

**(2) If any agreement or decision made pursuant to sections 105.500 to 105.545 requires a change in any rule applicable to an agency, such agency shall promptly initiate procedures necessary to modify such rule in compliance with the provisions of this subsection.**

**105.530. [Nothing contained in sections 105.500 to 105.530 shall be construed as granting a right to employees covered in sections 105.500 to 105.530 to strike.] 1. It shall be unlawful for public employees to strike. If a strike occurs, the public body may initiate in the circuit court of jurisdiction where the strike occurs, an action for injunctive relief.**

**2. It shall be unlawful for any public body to authorize, consent to or condone an illegal strike; or to pay or agree to pay any public employee for any day in which the employee participates in an illegal strike; or to pay or agree to pay any increase in compensation or benefits to any public employee in response to or as a result of any**

**illegal strike or any act which violates this act. It shall be unlawful for any official, director or representative of any public body to authorize, ratify or participate in any violation of this subsection. Nothing in this subsection shall prevent new or renewed bargaining and agreement within the scope of negotiations as defined by this act, at any time after a violation of this subsection has ceased.**

**3. In the event of any violation or imminently threatened violation of subsection 1 of this section, any citizen domiciled within the jurisdictional boundaries of the public body may petition the circuit court of the county in which the violation occurs for an injunction restraining such violation or imminently threatened violation. The court shall grant a temporary injunction if it appears to the court that a violation has occurred or is imminently threatened but the plaintiff need not show that the violation or threatened violation would greatly or irreparably injure him; and no bond shall be required of the plaintiff unless the court determines that a bond is necessary in the public interest.**

**4. If an employee organization or any of its officers is held to be in contempt of court for failure to comply with an injunction issued pursuant to this section, the employee organization shall be immediately decertified as the exclusive bargaining representative and shall cease to receive any dues by payroll deduction. The penalties provided in this section may be suspended or modified by the court, but only upon the joint request of the public employer and the employee organization and only if the court determines the suspension or modification is in the public interest.**

**5. If a public employee is held to be in criminal contempt of court for failure to comply with an injunction issued pursuant to this section, or is convicted of violating any provision of this section, notwithstanding the provisions of chapter 168, RSMo, the court may order that the employee be immediately discharged from his employment, or that notwithstanding the provisions of chapter 36, RSMo, the employee forfeit all seniority rights or any tenure acquired pursuant to sections 168.102 to 168.130, RSMo, or that the employee be ineligible for any employment by the same employer for a period of twelve months or any combination of such sanctions.**

**6. Any person who violates any provision of subsection 1 of this section shall, upon conviction thereof, be deemed guilty of a class B misdemeanor.**

**7. Each of the remedies and penalties provided by this section is separate and severable, and is in addition to any other legal or equitable remedy or penalty.**

**105.535. For purposes of sections 105.535 to 105.545 the following words and phrases mean:**

**(1) "Arbitration", the procedure whereby the parties involved in an impasse or grievance dispute submit their differences to a third party for a final and determinative**



**decision;**

**(2) "Impasse", the failure of a public body and the exclusive bargaining representative to reach agreement in the course of negotiations;**

**(3) "Mediation", assistance by an impartial third party to reconcile an impasse between the public body and the exclusive bargaining representative regarding wages, hours and other terms and conditions of employment through interpretation, suggestion and advice to resolve the impasse;**

**(4) "Strike", a public employee's refusal in concerted action with others, to report to duty, or the willful absence from one's position, the stoppage of work or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions or compensations or the rights, privileges or obligations of public employment. Nothing contained in this act shall be construed to limit, impair or affect the right of any public employee to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of employment.**

**105.540. 1. A request for negotiations shall be filed in writing by an exclusive bargaining representative no later than July first for collective bargaining agreements effective on July first of the following year. Negotiations shall begin no later than August first in the year the request was filed.**

**2. If an impasse occurs during negotiations, and if no agreement is reached by the parties by September first, either party may submit a request for mediation to the state board of mediation. The parties involved shall mutually agree upon a mediator or request the board to appoint an impartial mediator and such appointment shall occur within ten days of such request.**

**3. The mediator shall provide services to the parties until the parties reach agreement, the mediator believes that mediation services are no longer helpful or after the passage of thirty days, whichever occurs first. If the mediator determines that mediation services are no longer helpful or if the thirty-day deadline occurs, either party may submit the unresolved issues to arbitration by an arbitrator. The board shall provide the parties with a list of seven qualified arbitrators. Each party shall alternately strike one name from the list with the party submitting the impasse to arbitration making the first strike until one name remains who shall be the arbitrator for the parties involved in the dispute.**

**4. Each party shall submit a final offer on each separate item remaining at**

**impasse to the arbitrator and the other party. The arbitrator shall determine that either the final offer of the employer or the final offer of the exclusive representative on each separate issue shall be incorporated into the agreement, provided that the arbitrator shall not amend the offer of either party on any issue.**

**5. The arbitrator shall begin his hearings no later than thirty days after the request for arbitration in accordance with procedures prescribed by the board and the provisions of sections 435.350 to 435.470, RSMo, except section 435.460, RSMo, shall be applicable to the proceedings of the arbitrator. The arbitrator shall render a decision in writing no later than sixty days after initiation of arbitration. The costs of such arbitrations shall be borne equally by the parties. All time limits in this section may be extended by mutual agreement of the parties.**

**6. The procedures set forth in this section for collective bargaining and the resolutions of impasses reached in collective bargaining shall be followed by state and local public bodies and exclusive bargaining representatives of employees of state and local government bodies provided that local public bodies and such exclusive bargaining representatives shall determine collective bargaining time tables by mutual agreement of the parties, depending upon the fiscal year of the local public body.**

**7. In making any decision under the impasse procedures authorized by this section, the arbitrator shall consider the following factors:**

**(1) The effect of an agreement on the ability of the public body to provide public services at current levels;**

**(2) The lawful authority of the public body;**

**(3) Stipulations of the parties;**

**(4) The interests and welfare of the public;**

**(5) The financial ability of the public body to meet the costs of any items to be included in the contract;**

**(6) 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 sector;**

**(7) The average consumer prices for goods and services, commonly known as the "cost of living" or the consumer price index;**

**(8) The overall compensation presently received by the employees involved in the arbitration, including, but not limited to, wages, health and life insurance, vacations, holidays and similar benefits;**

**(9) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;**

**(10) Such other factors which 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 the public service or in private employment.**

**8. A collective bargaining agreement negotiated between the public body and the exclusive bargaining representative shall contain a grievance resolution procedure which shall apply to all disputes arising under the collective bargaining agreement and which shall provide for final and binding arbitration for issues that cannot be otherwise resolved. Any grievance of a state employee under a bargaining agreement shall be subject to the provisions of chapter 36, RSMo, except where an alternative grievance procedure has been adopted.**

**105.545. 1. Any portion of a final agreement which requires the public body to appropriate funds shall be subject to constitutional and statutory law and in the case of the state, be addressed in the budget submitted by the governor to the general assembly where it shall proceed through the formal appropriations process. Any political subdivision may adopt reasonable procedures which reflect the nature of such political subdivision's budget process and fiscal year.**

**2. In case of any conflict between the provisions of this act and any other law, the particular provisions of this act in conflict which cannot be harmonized shall prevail over general provisions in any other law, and where those particular provisions of this act are in conflict with the**

**3. The agreement shall remain in effect for the term specified therein. Upon the expiration of an agreement, the terms of such agreement shall remain in effect until superseded by a new agreement.**

**4. The provisions of sections 105.500 to 105.545 are hereby declared to be severable. Should any of the provisions of sections 105.500 to 105.545 be declared unconstitutional or in conflict with some other provision of law, the remaining provisions of sections 105.500 to 105.545 shall continue to be the law of the state relative to public employment relations.**

**5. Any employee organization and public employer may sue or be sued as an entity pursuant to the provisions of sections 105.500 to 105.545. Service upon the public employer or upon the exclusive bargaining representative shall be in accordance with law or the rules of civil procedure, except that for purposes of actions and proceedings by or against exclusive bargaining representatives pursuant to sections 105.500 to 105.545, the circuit courts shall be deemed to have jurisdiction of an exclusive bargaining representative in the circuit in which such organization maintains its**

**principal office, or in any circuit in which its duly authorized officers or agents are engaged in representing or acting for employee members. Nothing in sections 105.500 to 105.545 shall be construed to make any individual or his assets liable for any judgment against a public employer or an exclusive bargaining representative.**

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