

**SENATE BILL NO. 2331**

Introduced by

Senator Nething

Representatives S. Kelsh, Kretschmar

1 A BILL for an Act to create and enact a new chapter to title 34 of the North Dakota Century  
2 Code, relating to limited collective bargaining partnerships for executive branch agencies.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 34 of the North Dakota Century Code is created and  
5 enacted as follows:

6 **Strike or work stoppage prohibited.** A partnership agreement negotiated under this  
7 chapter must contain an agreement not to strike. It is a violation of this chapter for a certified  
8 employee organization to engage in or threaten strike, work stoppage, work slowdown, sickout,  
9 or other similar disruptive measure against the state. If a certified employee organization  
10 violates this chapter, the commissioner may decertify the certified employee organization and  
11 the decertified employee organization may not use payroll deductions of any membership dues.

12 **Definitions.** As used in this chapter, unless the context otherwise requires:

- 13 1. "Certified employee organization" means an employee organization selected by a  
14 majority of the employees voting in a secret ballot election held under this chapter  
15 for the purpose of exclusive representation and certified by the commissioner.  
16 2. "Commissioner" means the labor commissioner.  
17 3. "Covered employee" means an individual employed by an executive branch  
18 agency who occupies a position in the classified service under section 54-44.3-20.

19 The term does not include:

- 20 a. A temporary employee employed for six months or less;  
21 b. An individual in the custody of the department of corrections and  
22 rehabilitation;  
23 c. An administrative law judge;  
24 d. An attorney whose responsibilities include providing legal advice;

- 1           e. The governor's designee and any employee working with the labor  
2                 commissioner and the governor's designee to implement this chapter;
- 3           f. A member of the North Dakota national guard;
- 4           g. A managerial employee; and
- 5           h. A supervisory employee.
- 6        4. "Employee organization" means an organization in which covered employees may  
7           participate and which exists for the purpose, in whole or in part, of dealing with the  
8           state as employer concerning issues of mutual concern between covered  
9           employees and the state.
- 10       5. "Executive branch agency" means an executive branch state agency, board,  
11           commission, department, office, or other administrative unit of the executive branch  
12           of state government.
- 13       6. "Governor's designee" means the individual designated by the governor to  
14           represent the executive branch of state government in the exercise of all of the  
15           state executive branch duties under this chapter.
- 16       7. "Partnership agreement" means an agreement arrived at through good-faith  
17           discussions between the governor's designee, on behalf of the executive branch,  
18           and representatives of the certified employee organizations, on behalf of the  
19           covered employees, that provides for improving government services, achieving  
20           efficiencies, and establishing the framework for discussing issues of mutual  
21           concern to the covered employees of the state. As necessary, the term includes  
22           an agreement addressing issues on a multi-unit basis, agency-specific basis, or  
23           occupational group-specific basis, and may include memorandums of  
24           understanding directed to particular issues or objectives.
- 25       8. "Partnership unit" means a unit consisting of covered employees in a single  
26           occupational group.
- 27       9. "Supervisory employee" means an employee who is an appointing authority or who  
28           makes major personnel decisions, including staffing, hiring, firing, evaluating,  
29           promoting, and training of employees. The term does not include an employee  
30           who performs the human resource functions of an appointing authority by  
31           delegation.

1       **Application.** This chapter is in addition to chapter 34-12.

2       **Commissioner's duties.**

3       1. The commissioner shall serve as a neutral party charged with implementing and  
4       administering this chapter, resolving issues that may arise under this chapter, and  
5       adopting rules as necessary for the proper implementation of this chapter.

6       2. The commissioner shall appoint a three-member panel to advise and make  
7       recommendations to the commissioner regarding matters delegated to the  
8       commissioner under this chapter. At least one member of the panel must have  
9       experience in representing public employees. Each member of the panel:

10      a. Serves at the pleasure of the commissioner;

11      b. Is entitled to receive compensation as established by the commissioner which  
12      may not exceed one hundred thirty dollars for each day engaged in  
13      performance of duties of the panel; and

14      c. Must have experience in public sector labor relations, in teaching labor or  
15      employment relations, or in administering laws or policies applicable to labor  
16      or employment relations.

17      3. The commissioner shall appoint qualified mediators as necessary to assist parties  
18      in resolving impasses and disputes, issue findings of fact, and make  
19      recommendations to the parties. A mediator appointed under this subsection must  
20      be a disinterested party who is mutually acceptable to the involved parties.

21      4. The commissioner shall conduct elections and make determinations regarding  
22      certification of exclusive representation. In conducting elections, the commissioner  
23      shall appoint election monitors to take complaints regarding the conduct of  
24      elections and to make recommendations regarding the disposition of such  
25      complaints.

26      5. The commissioner shall supervise elections in the following occupational groups  
27      for purposes of partnership units:

28      a. Administrative support and related services;

29      b. Enforcement and protective services;

30      c. Labor and trades and crafts employees;

31      d. Employment and social services employees;

- 1 e. Health care and medical services employees;
- 2 f. State police officers;
- 3 g. Financial service employees;
- 4 h. Professional services; and
- 5 i. Regulatory and inspection employees.

6 **Determination of representation.**

- 7 1. The commissioner shall certify an employee organization as the exclusive  
8 representative of a partnership unit if the organization is designated as the  
9 partnership unit's representative by a majority of the covered employees voting  
10 within the partnership unit.
- 11 2. An employee organization may petition for certification by submitting to the  
12 commissioner a petition for exclusive representation. The petition must be  
13 accompanied by a showing of interest indicating the desire of the covered  
14 employees in a partnership unit to be exclusively represented by the petitioner for  
15 the purpose of negotiating a partnership agreement. The show of interest must be  
16 signed and dated by the employees within the twelve months preceding  
17 submission. A covered employee who is a dues-paying member of an employee  
18 organization is deemed to have expressed a show of interest in favor of the  
19 employee organization in which the covered employee is a member unless and  
20 until the covered employee expresses a contrary intent in writing. If a show of  
21 interest accompanying a petition is thirty percent or more of the covered  
22 employees in the partnership unit, the commissioner shall direct that an election be  
23 held. Within ten calendar days of determination that a valid petition has been  
24 submitted and election is necessary, the commissioner shall notify the interested  
25 employee organization and the governor's designee of the pending election  
26 petition. If a majority of the employees in a partnership unit that is appropriate for  
27 bargaining has signed valid authorizations designating an employee organization  
28 specified in the petition as the partnership unit's bargaining representative and no  
29 other employee organization is certified or otherwise recognized as the exclusive  
30 representative of any of the employees in the partnership unit, the commissioner

- 1           may not direct an election but shall certify the employee organization as the  
2           certified employee organization.
- 3           3. An interested employee organization may intervene in an election if the interested  
4           employee organization submits a petition of intervention to the commissioner within  
5           fifteen days of notice of the pending election. A petition of intervention must be  
6           accompanied by a show of interest supported by thirty percent of the covered  
7           employees in the partnership unit indicating the covered employees' desire to be  
8           exclusively represented by the intervenor for the purpose of negotiating a  
9           partnership agreement.
- 10          4. An election under this section must be held in accordance with rules adopted by  
11          the commissioner. In an election, covered employees have the option of voting to  
12          be exclusively represented by the petitioning employee organization, to be  
13          exclusively represented by an intervening employee organization, or to reject  
14          exclusive representation by any employee organization. An election must be a  
15          secret ballot that may take place by mail ballot, onsite balloting, or a combination of  
16          mail balloting and onsite balloting. An employee organization seeking certification  
17          under this section shall bear the costs associated with conducting and  
18          administering the certification elections, including printing, postage, and other  
19          supplies, as well as any temporary staff or overtime determined necessary to verify  
20          signatures, to staff or monitor polling places, and to determine the results of an  
21          election. If two or more employee organizations seek certification in a single  
22          election, the costs of conducting and administering the election must be borne  
23          equally by the respective employee organizations.
- 24          5. If none of the alternatives listed on the ballot receives a majority of the valid ballots  
25          cast in the partnership unit in any initial representation election held under this  
26          section, a secret ballot runoff election must be held between the top two recipients  
27          of votes. If an employee organization receives the majority of the valid ballots cast  
28          in the partnership unit, the commissioner shall certify that employee organization  
29          as the exclusive representative of the covered employees in the partnership unit.
- 30          6. Neither the commissioner nor any management or supervisory employee may  
31          encourage or discourage membership in any employee organization nor

1           encourage or discourage exclusive representation of employees by any employee  
2           organization.

3           7. Certification of an employee organization as an exclusive representative continues  
4           as long as the employee organization satisfies the criteria of this chapter. A  
5           petition to decertify an existing exclusive representative may be filed in the same  
6           manner as a petition for certification, except a decertification petition may not be  
7           filed for a partnership unit if:

8           a. An election has been held in that partnership unit within the preceding twelve  
9           months;

10          b. An exclusive representative of that partnership unit has been certified within  
11          the preceding two years; or

12          c. The partnership unit has in effect a valid occupational group-specific  
13          partnership agreement that by its terms does not exceed three years. The  
14          limitation imposed under this subdivision does not bar the filing of a  
15          decertification petition within the ninety-day period immediately preceding the  
16          expiration of the partnership agreement.

17          8. If a decertification petition is filed, the existing exclusive representative is deemed  
18          an intervenor on that petition and may not be required to submit a show of interest.

19          **Filing requirements for certified employee organizations.**

20          1. Each certified employee organization shall file and keep current with the  
21          commissioner:

22          a. The organization's constitution and bylaws. A certified employee organization  
23          may file the constitution and bylaws of the organization's national or  
24          international organization in lieu of a filing of the constitution and bylaws of the  
25          subordinate organization.

26          b. A list of the organization's officers and their addresses.

27          c. A copy of the most recently completed audit required by the certified  
28          employee organization's constitution and bylaws.

29          2. The commissioner shall reasonably construct the filing requirements of  
30          subsection 1 to allow for several organizations to affiliate or jointly file to seek  
31          certification under this chapter.

1           **Negotiating partnership agreements.** The governor's designee and the  
2 representatives of the certified employee organizations have a mutual obligation to negotiate  
3 the terms of the partnership agreement in good faith and at reasonable times and places. The  
4 discussions regarding partnership agreements can be initiated by the governor's designee or in  
5 response to a proposal by a certified employee organization or a coalition of certified employee  
6 organizations. A particular partnership agreement may be negotiated, depending on the nature  
7 of the issues subject to the agreement, on a statewide basis, occupational group basis, or  
8 department basis.

9           **Partnership agreements on matters necessitating statewide uniformity.** A  
10 partnership agreement that governs discussions of matters impacting all covered employees as  
11 a whole or that necessitate statewide uniformity must be negotiated on a collaborative basis  
12 with all certified employee organizations. The negotiation of such a partnership agreement  
13 must be conducted by the governor's designee in concert with the executive officials charged  
14 with administering issues subject to the agreement and with a designee or negotiating team  
15 selected by a coalition of the certified employee organizations. Such a partnership agreement  
16 is subject to the approval of the governor and other officials charged with administering the  
17 issues subject to the agreement.

18           **Partnership agreements on matters affecting individual occupational groups.** A  
19 partnership agreement that governs discussions of matters impacting covered employees in a  
20 single occupational group must be negotiated with the certified employee organization  
21 representing that occupational group and with the governor's designee in concert with the  
22 executive officials charged with administering the issues subject to the agreement. Such a  
23 partnership agreement is subject to the approval of the governor and other officials charged  
24 with administering the issues subject to the agreement.

25           **Partnership agreements on matters involving particular departments.**

26           1. A partnership agreement that governs discussions of matters impacting covered  
27 employees in a single department must be negotiated by the executive director of  
28 the department in concert with the governor's designee and with a designee or  
29 negotiating team selected by a coalition of the certified employee organizations  
30 representing covered employees in the respective department. Such a partnership

1           agreement is subject to the approval of the executive director of the department  
2           and the governor.

3           2. The executive directors of executive branch agencies with covered employees  
4           shall negotiate in good faith a partnership agreement with the certified employee  
5           organizations representing the covered employees in their agencies.

6           3. A partnership agreement does not diminish the governor's discretion to prepare a  
7           proposed budget, including setting the amount allocated to total employee  
8           compensation in that proposed budget. A partnership agreement may not include  
9           a requirement or an agreement that the executive branch or executive branch  
10          agency negotiate with respect to the statutory functions of any executive branch  
11          agency or to matters related to the public employees retirement system.

12          **Impasse and dispute resolution.** If the parties reach an impasse in the course of  
13 negotiating a partnership agreement, either the governor's designee or a representative of a  
14 certified employee organization may request that the commissioner appoint a neutral third party  
15 to mediate any dispute over the terms and conditions of a partnership agreement. The  
16 appointed mediator may make nonbinding written recommendations to the parties for resolution  
17 of the impasse. Upon successful completion of negotiation, the parties shall execute a written  
18 partnership agreement. The terms of a partnership agreement may provide procedures for  
19 resolving disputes, including disputes over the interpretation and application of a partnership  
20 agreement. Dispute resolution procedures may include nonbinding mediation and factfinding  
21 but may not include binding arbitration.