

SENATE BILL NO.

Introduced by

Senator Nething

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

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

13 The term does not include:

- 14 a. A temporary employee employed for six months or less;
15 b. An individual in the custody of the department of corrections and
16 rehabilitation;
17 c. An administrative law judge;
18 d. An attorney whose responsibilities include providing legal advice;
19 e. The governor's designee and any employee working with the labor
20 commissioner and the governor's designee to implement this chapter;
21 f. A member of the North Dakota national guard;
22 g. A managerial employee; and
23 h. A supervisory employee.

- 1 4. "Employee organization" means an organization in which covered employees may
2 participate and which exists for the purpose, in whole or in part, of dealing with the
3 state as employer concerning issues of mutual concern between covered
4 employees and the state.
- 5 5. "Executive branch agency" means an executive branch state agency, board,
6 commission, department, office, or other administrative unit of the executive branch
7 of state government.
- 8 6. "Governor's designee" means the individual designated by the governor to
9 represent the executive branch of state government in the exercise of all of the
10 state executive branch duties under this chapter.
- 11 7. "Partnership agreement" means an agreement arrived at through good-faith
12 discussions between the governor's designee, on behalf of the executive branch,
13 and representatives of the certified employee organizations, on behalf of the
14 covered employees, that provides for improving government services, achieving
15 efficiencies, and establishing the framework for discussing issues of mutual
16 concern to the covered employees of the state. As necessary, the term includes
17 an agreement addressing issues on a multi-unit basis, agency-specific basis, or
18 occupational group-specific basis, and may include memorandums of
19 understanding directed to particular issues or objectives.
- 20 8. "Partnership unit" means a unit consisting of covered employees in a single
21 occupational group.
- 22 9. "Supervisory employee" means an employee who is an appointing authority. The
23 term does not include an employee who performs the human resource functions of
24 an appointing authority by delegation.

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

26 **Commissioner's duties.**

- 27 1. The commissioner shall serve as a neutral party charged with implementing and
28 administering this chapter, resolving issues that may arise under this chapter, and
29 adopting rules as necessary for the proper implementation of this chapter.
- 30 2. The commissioner may appoint a three-member panel to advise and make
31 recommendations to the commissioner regarding matters delegated to the

- 1 commissioner under this chapter. If the commissioner appoints a panel under this
2 subsection, each member of the panel:
- 3 a. Serves at the pleasure of the commissioner;
4 b. Is entitled to receive compensation as established by the commissioner which
5 may not exceed one hundred thirty dollars for each day engaged in
6 performance of duties of the panel; and
7 c. Must have experience in public sector labor relations, in teaching labor or
8 employment relations, or in administering laws or policies applicable to labor
9 or employment relations.
- 10 3. The commissioner shall appoint qualified mediators as necessary to assist parties
11 in resolving impasses and disputes, issue findings of fact, and make
12 recommendations to the parties. A mediator appointed under this subsection must
13 be a disinterested party who is mutually acceptable to the involved parties.
- 14 4. The commissioner shall conduct elections and make determinations regarding
15 certification of exclusive representation. In conducting elections, the commissioner
16 shall appoint election monitors to take complaints regarding the conduct of
17 elections and to make recommendations regarding the disposition of such
18 complaints.
- 19 5. The commissioner shall designate occupational groups for purposes of partnership
20 units.

21 **Determination of representation.**

- 22 1. The commissioner shall certify an employee organization as the exclusive
23 representative of a partnership unit if the organization is designated as the
24 partnership unit's representative by a majority of the covered employees voting
25 within the partnership unit.
- 26 2. An employee organization may petition for certification by submitting to the
27 commissioner a petition for exclusive representation. The petition must be
28 accompanied by a showing of interest indicating the desire of the covered
29 employees in a partnership unit to be exclusively represented by the petitioner for
30 the purpose of negotiating a partnership agreement. The show of interest must be
31 signed and dated by the employees within the twelve months preceding

1 submission. A covered employee who is a dues-paying member of an employee
2 organization is deemed to have expressed a show of interest in favor of the
3 employee organization in which the covered employee is a member unless and
4 until the covered employee expresses a contrary intent in writing. If a show of
5 interest accompanying a petition is thirty percent or more of the covered
6 employees in the partnership unit, the commissioner shall direct that an election be
7 held. Within ten calendar days of determination that a valid petition has been
8 submitted and election is necessary, the commissioner shall notify the interested
9 employee organization and the governor's designee of the pending election
10 petition.

11 3. An interested employee organization may intervene in an election if the interested
12 employee organization submits a petition of intervention to the commissioner within
13 fifteen days of notice of the pending election. A petition of intervention must be
14 accompanied by a show of interest supported by thirty percent of the covered
15 employees in the partnership unit indicating the covered employees' desire to be
16 exclusively represented by the intervenor for the purpose of negotiating a
17 partnership agreement.

18 4. An election under this section must be held in accordance with rules adopted by
19 the commissioner. In an election, covered employees have the option of voting to
20 be exclusively represented by the petitioning employee organization, to be
21 exclusively represented by an intervening employee organization, or to reject
22 exclusive representation by any employee organization. An election may take
23 place by mail ballot, onsite balloting, or a combination of mail balloting and onsite
24 balloting. An employee organization seeking certification under this section shall
25 bear the costs associated with conducting and administering the certification
26 elections, including printing, postage, and other supplies, as well as any temporary
27 staff or overtime determined necessary to verify signatures, to staff or monitor
28 polling places, and to determine the results of an election. If two or more employee
29 organizations seek certification in a single election, the costs of conducting and
30 administering the election must be borne equally by the respective employee
31 organizations.

- 1 5. If none of the alternatives listed on the ballot receives a majority of the valid ballots
2 cast in the partnership unit in any initial representation election held under this
3 section, a runoff election must be held between the employee organization that
4 received the highest number of votes cast in the initial election and the option of
5 rejecting representation by any employee organization. If an employee
6 organization received the majority of the valid ballots cast in the partnership unit,
7 the commissioner shall certify that employee organization as the exclusive
8 representative of the covered employees in the partnership unit.
- 9 6. Neither the commissioner nor any management or supervisory employee may
10 encourage or discourage membership in any employee organization nor
11 encourage or discourage exclusive representation of employees by any employee
12 organization.
- 13 7. Certification of an employee organization as an exclusive representative continues
14 as long as the employee organization satisfies the criteria of this chapter and rules
15 adopted by the commissioner. A petition to decertify an existing exclusive
16 representative may be filed in the same manner as a petition for certification,
17 except a decertification petition may not be filed for a partnership unit if:
- 18 a. An election has been held in that partnership unit within the preceding twelve
19 months;
- 20 b. An exclusive representative of that partnership unit has been certified within
21 the preceding two years; or
- 22 c. The partnership unit has in effect a valid occupational group-specific
23 partnership agreement that by its terms does not exceed three years. The
24 limitation imposed under this subdivision does not bar the filing of a
25 decertification petition within the ninety-day period immediately preceding the
26 expiration of the partnership agreement.
- 27 8. If a decertification petition is filed, the existing exclusive representative is deemed
28 an intervenor on that petition and may not be required to submit a show of interest.

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

- 30 1. Each certified employee organization shall file and keep current with the
31 commissioner:

- 1 a. The organization's constitution and bylaws. A certified employee organization
2 may file the constitution and bylaws of the organization's national or
3 international organization in lieu of a filing of the constitution and bylaws of the
4 subordinate organization.
- 5 b. A list of the organization's officers and their addresses.
- 6 c. A copy of the most recently completed audit required by the certified
7 employee organization's constitution and bylaws.
- 8 2. The commissioner shall reasonably construct the filing requirements of
9 subsection 1 to allow for several organizations to affiliate or jointly file to seek
10 certification under this chapter.

11 **Negotiating partnership agreements.** The governor's designee and the
12 representatives of the certified employee organizations have a mutual obligation to negotiate
13 the terms of the partnership agreement in good faith and at reasonable times and places. The
14 discussions regarding partnership agreements can be initiated by the governor's designee or in
15 response to a proposal by a certified employee organization or a coalition of certified employee
16 organizations. A particular partnership agreement may be negotiated, depending on the nature
17 of the issues subject to the agreement, on a statewide basis, occupational group basis, or
18 department basis.

19 **Partnership agreements on matters necessitating statewide uniformity.** A
20 partnership agreement that governs discussions of matters impacting all covered employees as
21 a whole or that necessitate statewide uniformity must be negotiated on a collaborative basis
22 with all certified employee organizations. The negotiation of such a partnership agreement
23 must be conducted by the governor's designee in concert with the executive officials charged
24 with administering issues subject to the agreement and with a designee or negotiating team
25 selected by a coalition of the certified employee organizations. Such a partnership agreement
26 is subject to the approval of the governor and other officials charged with administering the
27 issues subject to the agreement.

28 **Partnership agreements on matters affecting individual occupational groups.** A
29 partnership agreement that governs discussions of matters impacting covered employees in a
30 single occupational group must be negotiated with the certified employee organization
31 representing that occupational group and with the governor's designee in concert with the

1 executive officials charged with administering the issues subject to the agreement. Such a
2 partnership agreement is subject to the approval of the governor and other officials charged
3 with administering the issues subject to the agreement.

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

- 5 1. A partnership agreement that governs discussions of matters impacting covered
6 employees in a single department must be negotiated by the executive director of
7 the department in concert with the governor's designee and with a designee or
8 negotiating team selected by a coalition of the certified employee organizations
9 representing covered employees in the respective department. Such a partnership
10 agreement is subject to the approval of the executive director of the department
11 and the governor.
- 12 2. The executive directors of executive branch agencies with covered employees
13 shall negotiate in good faith a partnership agreement with the certified employee
14 organizations representing the covered employees in their agencies.
- 15 3. A partnership agreement does not diminish the governor's discretion to prepare a
16 proposed budget, including setting the amount allocated to total employee
17 compensation in that proposed budget. A partnership agreement may not include
18 a requirement or an agreement that the executive branch or executive branch
19 agency negotiate with respect to the statutory functions of any executive branch
20 agency or to matters related to the public employees retirement system.

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

1 **No strike or work stoppage.** A partnership agreement negotiated under this chapter
2 must contain an agreement not to strike. It is a violation of this chapter for a certified employee
3 organization to engage in or threaten strike, work stoppage, work slowdown, sickout, or other
4 similar disruptive measure against the state. If a certified employee organization violates this
5 chapter, the commissioner may decertify the certified employee organization and the decertified
6 employee organization may not use payroll deductions of any membership dues.