

2016 Regular Session

SENATE BILL NO. 438

BY SENATOR PETERSON

EMPLOYMENT. Enacts the Public Employee Partnership Act. (7/1/16)

1 AN ACT

2 To enact Part III of Chapter 8 of Title 23 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 23:861 through 861.21, and R.S. 36:4(BB), relative to public
4 employment; to enact the Public Employee Partnership Act; to establish the Public
5 Employees Labor Relations Board; to provide for the membership, powers, and
6 duties of the board; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Part III of Chapter 8 of Title 23 of the Louisiana Revised Statutes of 1950,
9 comprised of R.S. 23:861 through 861.21, is hereby enacted to read as follows:

10 **PART III. PUBLIC EMPLOYEE PARTNERSHIP ACT**

11 **§861. Short title**

12 **This Part may be cited as the "Public Employee Partnership Act".**

13 **§861.1. Purpose of Part**

14 **The purpose of this Part is to guarantee public employees the right to**
15 **organize and bargain collectively as partners with mutual respect, similar**
16 **interests, and common concerns with their employers, to promote harmonious**
17 **and cooperative relationships between public employers and public employees,**

1 and to protect the public interest by ensuring, at all times, the orderly operation
2 and functioning of the state and its political subdivisions.

3 §861.2. Conflicts

4 In the event of conflict with other law or regulation, the provisions of this
5 Part shall supersede other previously enacted laws and regulations; provided
6 that this Part shall not supersede any provision of applicable civil service law.

7 §861.3. Definitions

8 As used in this Part:

9 (1) "Appropriate bargaining unit" means a group of public employees
10 designated by the Public Employees Labor Relations Board for the purpose of
11 collective bargaining.

12 (2) "Appropriate governing body" means the policymaking body or
13 individual representing a public employer as designated in R.S. 23:861.6.

14 (3) "Authorization card" means a signed affirmation by a member of an
15 appropriate bargaining unit designating a particular organization as exclusive
16 representative.

17 (4) "Board" means the Public Employees Labor Relations Board.

18 (5) "Certification" means the designation by the board of a labor
19 organization as the exclusive representative for all public employees in an
20 appropriate bargaining unit.

21 (6) "Collective bargaining" means the act of negotiating between an
22 appropriate governing body and an exclusive representative for the purpose of
23 entering into a written agreement regarding wages, hours, and other terms and
24 conditions of employment.

25 (7) "Emergency" means a one-time crisis that was unforeseen and
26 unavoidable.

27 (8) "Exclusive representative" means a labor organization that, as a
28 result of certification, has the right to represent all public employees in an
29 appropriate bargaining unit for the purposes of collective bargaining.

1 **(9) "Fair share" means the payment to a labor organization which is the**
2 **exclusive representative for an appropriate bargaining unit by an employee of**
3 **that bargaining unit who is not a member of that labor organization equal to a**
4 **certain percentage of membership dues. Such figure is to be calculated based**
5 **on federal and state law and jurisprudence identifying those expenditures by a**
6 **labor organization which are permissibly chargeable to all employees in the**
7 **appropriate bargaining unit under federal and state law and jurisprudence,**
8 **including but not limited to all expenditures incurred by the labor organization**
9 **in negotiating the contract applicable to all employees in the appropriate**
10 **bargaining unit, servicing such contract, and representing all such employees**
11 **in grievances and disciplinary actions.**

12 **(10) "Impasse" means failure of an appropriate governing body and an**
13 **exclusive representative, after good-faith bargaining, to reach agreement in the**
14 **course of negotiating a collective bargaining agreement.**

15 **(11) "Labor organization" means an employee organization, one of**
16 **whose purposes is the representation of public employees in collective**
17 **bargaining or in otherwise meeting, consulting, and conferring with employers**
18 **on matters pertaining to employment relations.**

19 **(12) "Lockout" means an act by a public employer to prevent its**
20 **employees from going to work for the purpose of resisting the demands of the**
21 **employees' exclusive representative or for the purpose of gaining a concession**
22 **from the exclusive representative.**

23 **(13) "Mediation" means assistance by an impartial third party to resolve**
24 **an impasse between an appropriate governing body and an exclusive**
25 **representative regarding employment relations through interpretation,**
26 **suggestion, and advice.**

27 **(14) "Professional employee" means an employee whose work is**
28 **predominantly intellectual and varied in character and whose work involves the**
29 **consistent exercise of discretion and judgment in its performance and requires**

1 knowledge of an advanced nature in a field of learning customarily requiring
2 specialized study at an institution of higher education or its equivalent. The
3 work of a professional employee is of such character that the output or result
4 accomplished cannot be standardized in relation to a given period of time.

5 (15) "Public employee" means an employee of a public employer; and,
6 in the public schools, "public employee" shall also include a regular
7 probationary employee, and in either situation, whose salary, wages, or job
8 description is determined in whole or in part by a public employer.

9 (16) "Public employer" means the state or a political subdivision thereof,
10 including a municipality, parish, or consolidated government that has adopted
11 a home rule charter. "Public employer" does not include a government of an
12 Indian nation or tribe.

13 (17) "Strike" means a public employee's refusal, in concerted action with
14 other public employees, to report for duty or his willful absence in whole or in
15 part from the full, faithful, and proper performance of the duties of
16 employment for the purpose of inducing, influencing, or coercing a change in
17 the conditions, compensation, rights, privileges, or obligations of public
18 employment.

19 §861.4. Rights of public employees

20 Public employees shall have the right to form, join, or assist a labor
21 organization for the purpose of collective bargaining through representatives
22 chosen by public employees without interference, restraint, or coercion and
23 shall likewise have the right to refuse any such activities.

24 §861.5. Rights of public employers

25 Unless limited by the provisions of state or federal law, a public
26 employer may:

27 (1) Direct the work of, hire, promote, assign, transfer, demote, suspend,
28 discharge, or terminate a public employee for just cause.

29 (2) Determine qualifications for employment and the nature and content

1 of personnel examinations.

2 (3) Take actions as may be necessary to carry out the mission of the
3 public employer in emergencies.

4 (4) Retain all rights not specifically limited by a collective bargaining
5 agreement or by this Part.

6 §861.6. Appropriate governing body as public employer

7 The appropriate governing body of a public employer is the
8 policymaking individual or body representing the public employer. In the case
9 of the state, the appropriate governing body is the governor or his designee or,
10 in the case of a constitutionally created body, the constitutionally designated
11 head of that body. For a political subdivision, the appropriate governing body
12 is the elected or appointed representative body or individual charged with
13 management of the political subdivision. In the event of dispute, the board shall
14 determine the appropriate governing body.

15 §861.7. Public Employees Labor Relations Board created; terms; qualifications

16 A. The Public Employees Labor Relations Board is created within the
17 office of the governor. The board shall consist of three members appointed by
18 the governor subject to Senate confirmation. The governor shall appoint one
19 member recommended by organized labor representatives actively involved in
20 representing public employees, one member recommended by public employers
21 actively involved in collective bargaining, and one member jointly
22 recommended from a list of three nominees nominated by the other two
23 appointees.

24 B.(1) Except for initial appointments, board members shall serve for a
25 period of three years with terms commencing on July first. Vacancies shall be
26 filled in the same manner as the original appointment, and such appointments
27 shall only be made for the remainder of the unexpired term.

28 (2) For the purpose of making initial appointments to the board, the
29 governor shall designate one member to serve a one-year term, one member to

1 serve a two-year term, and one member to serve a three-year term.

2 C. No member shall hold or be a candidate for an elected public office
3 while serving on the board.

4 D. Each board member shall be paid a per diem established by the
5 division of administration and mileage in accordance with state law and policies
6 governing such payments for attendance at board meetings. In no event shall
7 the per diem amount exceed the per diem amount paid to members of the
8 legislature.

9 §861.8. Board; powers and duties

10 A. The board shall administer all provisions of this Part, and shall
11 promulgate rules necessary to accomplish and perform its functions and duties
12 as established in this Part, including the establishment of procedures for:

13 (1) The designation of appropriate bargaining units.

14 (2) The selection, certification, and decertification of exclusive
15 representatives.

16 (3) The filing of, hearing on, and determination of complaints of
17 prohibited practices.

18 B. The board shall:

19 (1) Hold hearings and make inquiries necessary to conduct its functions
20 and duties.

21 (2) Conduct studies on problems pertaining to employee-employer
22 relations.

23 (3) Request from public employers and labor organizations the
24 information and data necessary to carry out the board's functions and
25 responsibilities.

26 C. The board may issue subpoenas requiring, upon reasonable notice, the
27 attendance and testimony of witnesses and the production of evidence, including
28 books, records, correspondence, or documents relating to the matter in
29 question. The board may prescribe the form of subpoena, but it shall adhere

1 insofar as practicable to the form used in civil actions in the district court. The
2 board may administer oaths and affirmations, examine witnesses, and receive
3 evidence. In any and all cases of refusal to obey a subpoena issued by the board,
4 the district court of the district where the person refusing to obey such
5 subpoena may be found, by application of the board, may issue an order
6 requiring such person to appear before the board and to testify and produce
7 evidence ordered relating to the matter under investigation, and any failure to
8 obey such order shall be punishable by the court as a contempt thereof.

9 D. The board shall decide issues by majority vote and shall issue its
10 decisions in the form of written orders and opinions.

11 E. The board may hire personnel or contract with third parties as it
12 deems necessary to assist it in carrying out its functions.

13 F. The board has the power to enforce provisions of this Part through the
14 imposition of appropriate administrative remedies.

15 G. A rule promulgated by the board shall not require, directly or
16 indirectly, as a condition of continuous employment, a public employee covered
17 by this Part to join a labor organization that is certified as an exclusive
18 representative. The issue of fair share shall be left a permissive subject of
19 bargaining by the appropriate governing body of an appropriate bargaining
20 unit and the exclusive representative of the employees in such bargaining unit.

21 §861.9. Hearing procedures

22 A. The board may hold hearings for the purposes of:

23 (1) Information gathering and inquiry.

24 (2) Adopting rules.

25 (3) Adjudicating disputes and enforcing the provisions of this Part and
26 rules adopted pursuant thereto.

27 B. The board shall adopt rules setting forth procedures to be followed
28 during hearings of the board. The procedures adopted for conducting
29 adjudicatory hearings shall meet all minimal due process requirements of the

1 state and federal constitutions.

2 C. A rule proposed to be adopted by the board that affects a person or
3 governmental entity outside of the board and its staff shall not be adopted,
4 amended, or repealed without public hearing and comment on the proposed
5 action before the board. The public hearing shall be held after notice of the
6 subject matter of the rule, the action proposed to be taken, the time and place
7 of the hearing, the manner in which interested persons may present their views
8 and the method by which copies of the proposed rule, proposed amendment, or
9 repeal of an existing rule may be obtained. All meetings of the board shall be
10 held in Baton Rouge. Notice shall be published once at least thirty days prior to
11 the hearing date in a newspaper of general circulation in the state, and notice
12 shall be mailed at least thirty days prior to the hearing date to all persons who
13 have made a written request for advance notice of hearings.

14 D. Except as otherwise provided in this Part, all rules shall be proposed,
15 adopted, and promulgated in accordance with the Administrative Procedure
16 Act.

17 E. A verbatim record made by electronic or other suitable means shall
18 be made of every rulemaking and adjudicatory hearing, and such records shall
19 be maintained for a period of not less than three years. The record shall not be
20 transcribed unless required for judicial review or unless ordered by the board.

21 §861.10. Appropriate bargaining units

22 A. The board shall, upon receipt of a petition for a representation
23 election filed by a labor organization, designate the appropriate bargaining
24 units for collective bargaining. Appropriate bargaining units shall be
25 established on the basis of occupational groups or clear and identifiable
26 communities of interest in employment terms and conditions and related
27 personnel matters among the public employees involved. Occupational groups
28 shall generally be identified as blue-collar, secretarial/clerical, technical,
29 professional, public school teachers, public higher education faculties, and

1 eligible staff, paraprofessionals, police, fire, and corrections. The parties, by
2 mutual agreement, may further consolidate occupational groups. Essential
3 factors in determining appropriate bargaining units shall include the principles
4 of efficient administration of government, the history of collective bargaining,
5 and the assurance to public employees of the fullest freedom in exercising the
6 rights guaranteed by this Part.

7 B. Either party may notify the board in writing of a disagreement arising
8 between a public employer and a labor organization concerning the composition
9 of an appropriate bargaining unit. The board shall notify both parties within
10 ten business days that a disagreement has been filed and hold a hearing within
11 thirty days after the notification concerning the composition of the bargaining
12 unit before designating an appropriate bargaining unit.

13 §861.11. Elections

14 A. Whenever, in accordance with rules prescribed by the board, a
15 petition is filed with the board by a labor organization containing the signatures
16 of at least thirty percent of the public employees in an appropriate bargaining
17 unit, the board shall conduct a secret ballot representation election to determine
18 whether and by which labor organization the public employees in the
19 appropriate bargaining unit shall be represented. The ballot shall contain the
20 name of any labor organization submitting a petition containing signatures of
21 at least thirty percent of the public employees in the appropriate bargaining
22 unit. The ballot shall also contain a provision allowing a public employee to
23 indicate that he does not desire to be represented by a labor organization.
24 Election results shall be determined by the majority of the votes cast in the
25 appropriate bargaining unit.

26 B. Once a labor organization has filed a petition with the board calling
27 for a representation election in accordance with and meeting the requirements
28 of Subsection A of this Section, other labor organizations may seek to be placed
29 on the ballot. Such an organization shall file a petition containing the signatures

1 of not less than twenty percent of the public employees in the appropriate
2 bargaining unit no later than ten days after the board and the public employer
3 post a written notice that the petition in Subsection A of this Section has been
4 filed by a labor organization.

5 C. As an alternative to the provisions of Subsection A of this Section, a
6 public employer and a labor organization with a reasonable basis for claiming
7 to represent a majority of the employees in an appropriate bargaining unit may
8 establish an alternative appropriate procedure for determining majority status.
9 The procedure may include a labor organization's submission of authorization
10 cards from a majority of the employees in an appropriate bargaining unit.

11 D. If a labor organization receives a majority of votes cast, it shall be
12 certified as the exclusive representative of all public employees in the
13 appropriate bargaining unit. Within fifteen days of an election in which no
14 labor organization receives a majority of the votes cast and in which all labor
15 organizations on the ballot collectively receive a majority of the votes cast, a
16 runoff election between the two choices receiving the largest number of votes
17 cast shall be conducted. The board shall certify the results of the election, and,
18 when a labor organization receives a majority of the votes cast, the board shall
19 certify the labor organization as the exclusive representative of all public
20 employees in the appropriate bargaining unit.

21 E. An election shall not be conducted if an election or runoff election has
22 been conducted in the twelve-month period immediately preceding the proposed
23 representation election. An election shall not be held during the term of an
24 existing collective bargaining agreement, except as provided in R.S. 23:861.15.

25 §861.12. Exclusive representation

26 A. A labor organization that has been certified by the board as
27 representing the public employees in the appropriate bargaining unit shall be
28 the exclusive representative of all public employees in the appropriate
29 bargaining unit. The exclusive representative shall act for all public employees

1 in the appropriate bargaining unit and negotiate a collective bargaining
2 agreement covering all public employees in the appropriate bargaining unit.
3 The exclusive representative shall represent the interests of all public employees
4 in the appropriate bargaining unit without discrimination or regard to
5 membership in the labor organization.

6 B. This Section does not prevent a public employee, acting individually,
7 from presenting a grievance without the intervention of the exclusive
8 representative. At a hearing on a grievance brought by a public employee
9 individually, the exclusive representative shall be notified and afforded the
10 opportunity to be present and make its views known. An adjustment made shall
11 not be inconsistent with or in violation of the collective bargaining agreement
12 then in effect between the appropriate governing body and the exclusive
13 representative.

14 §861.13. Decertification of exclusive representative

15 A. A member of a labor organization or the labor organization itself may
16 initiate decertification of a labor organization as the exclusive representative if
17 thirty-five percent of the public employees in the appropriate bargaining unit
18 make a written request to the board for a decertification election.
19 Decertification elections shall be held in a manner prescribed by rule of the
20 board. The election shall be determined by a majority of the votes cast on the
21 issue of decertification.

22 B. When there is a collective bargaining agreement in effect, a request
23 for a decertification election shall be made to the board no earlier than ninety
24 days and no later than sixty days before the expiration of the collective
25 bargaining agreement. However, a request for an election may be filed at any
26 time after the expiration of the third year of a collective bargaining agreement
27 with a term of more than three years.

28 C. When, within the time period prescribed in Subsection B of this
29 Section, a competing labor organization files a petition containing signatures of

1 at least thirty-five percent of the public employees in the appropriate
2 bargaining unit, a representation election rather than a decertification election
3 shall be conducted.

4 D. When an exclusive representative has been certified but no collective
5 bargaining agreement is in effect, the board shall not accept a request for a
6 decertification election earlier than twelve months subsequent to a labor
7 organization's certification as the exclusive representative.

8 §861.14. Scope of bargaining

9 A. Except for retirement programs provided by state and statewide
10 retirement systems or other such matters specifically covered by state law,
11 appropriate governing bodies and exclusive representatives:

12 (1) Shall bargain in good faith on wages, hours, and all other terms and
13 conditions of employment and other issues agreed to by the parties. However,
14 neither the appropriate governing body nor the exclusive representative shall
15 be required to agree to a proposal or to make a concession.

16 (2) Shall enter into written collective bargaining agreements covering
17 employment relations.

18 B. The obligation to bargain collectively imposed by this Part shall not
19 be construed as authorizing an appropriate governing body and an exclusive
20 representative to enter into an agreement that is in conflict with the provisions
21 of any other state law. In the event of conflict between the provisions of any
22 other state law and an agreement entered into by the appropriate governing
23 body and the exclusive representative in collective bargaining, the laws of this
24 state shall prevail.

25 C. Payroll deduction. The amount of dues shall be certified in writing by
26 an official of the labor organization. The public employer shall honor payroll
27 deductions until the authorization is revoked in writing by the public employee
28 in accordance with the negotiated agreement and for so long as the labor
29 organization is certified as the exclusive representative. During the time that a

1 board certification is in effect for a particular appropriate bargaining unit, the
2 public employer shall not deduct dues for any other labor organization.

3 D. The scope of bargaining for public schools as well as educational
4 employees in state agencies shall include, as a mandatory subject of bargaining,
5 the impact of professional and instructional decisions made by the employer.

6 E.(1) An impasse resolution or an agreement provision between an
7 appropriate governing body and an exclusive representative that requires the
8 expenditure of funds shall not be contingent upon the specific appropriation of
9 funds by the legislature and the availability of funds.

10 (2) An agreement provision between an appropriate governing body and
11 an exclusive representative that requires the expenditure of available funds
12 shall not be contingent upon ratification by the appropriate governing body.

13 F. An agreement shall include a grievance procedure to be used for the
14 settlement of disputes pertaining to employment terms and conditions and
15 related personnel matters. The grievance procedure shall provide for a final and
16 binding determination. The final determination shall constitute an arbitration
17 award within the meaning of the Louisiana Binding Arbitration Law pursuant
18 to Chapter 2 of Code Title XIX of Code Book III of Title 9 of the Louisiana
19 Revised Statutes of 1950; such award shall be subject to judicial review
20 pursuant to the standard set forth in the Louisiana Binding Arbitration Law.
21 The costs of an arbitration proceeding conducted pursuant to this Subsection
22 shall be shared equally by the parties.

23 G. The following meetings may be closed:

24 (1) Meetings for the discussion of bargaining strategy preliminary to
25 collective bargaining negotiations between the appropriate governing body and
26 the exclusive representative of the public employees of the appropriate
27 bargaining unit.

28 (2) Collective bargaining sessions.

29 (3) Consultations and impasse resolution procedures at which the

1 appropriate governing body and the exclusive representative of the appropriate
2 bargaining unit are present.

3 §861.15. Impasse resolutions

4 A. The following negotiations and impasse procedures shall be followed
5 by the appropriate governing bodies of appropriate bargaining units of the state
6 and exclusive representatives for employees in such bargaining units:

7 (1) A request to the appropriate bargaining unit of the state for the
8 commencement of initial negotiations shall be filed in writing by the exclusive
9 representative no later than June first of the year in which negotiations are to
10 take place. Negotiations shall begin no later than July first of that year.

11 (2) In subsequent years, negotiations agreed to by the parties shall begin
12 no later than August first following the submission of written notice to the state
13 by the exclusive representative no later than July first of the year in which
14 negotiations are to take place.

15 (3) If an impasse occurs during negotiations between the parties, and if
16 an agreement is not reached by the parties by October first, either party may
17 request mediation services from the board. A mediator from the federal
18 mediation and conciliation service shall be assigned by the board to assist in
19 negotiations unless the parties agree to another mediator.

20 (4) The mediator shall provide services to the parties until the parties
21 reach agreement or the mediator believes that mediation services are no longer
22 helpful or until November first, whichever occurs first.

23 (5) If the impasse continues after November first, either party may
24 request a list of seven arbitrators from the federal mediation and conciliation
25 service. One arbitrator shall be chosen by the parties by alternately eliminating
26 names from such list. Who eliminates first shall be determined by coin toss. The
27 arbitrator shall render a final, binding, written decision resolving unresolved
28 issues pursuant to R.S. 23:861.16(5) and the Louisiana Binding Arbitration Law
29 no later than thirty days after the arbitrator has been notified of his selection

1 by the parties. The costs of an arbitrator and the arbitrator's related costs
2 conducted pursuant to this Subsection shall be shared equally by the parties.
3 Each party shall be responsible for bearing the cost of presenting its case. The
4 decision shall be subject to judicial review pursuant to the standard set forth in
5 the Louisiana Binding Arbitration Law.

6 B. The following impasse procedures shall be followed by all appropriate
7 governing bodies of appropriate bargaining units of political subdivisions and
8 exclusive representatives of the employees in such bargaining units:

9 (1) If an impasse occurs, either party may request from the board that
10 a mediator be assigned to the negotiations unless the parties can agree on a
11 mediator. A mediator with the federal mediation and conciliation service shall
12 be assigned by the board to assist negotiations unless the parties agree to
13 another mediator.

14 (2) If the impasse continues after a thirty-day mediation period, either
15 party may request a list of seven arbitrators from the federal mediation and
16 conciliation service. One arbitrator shall be chosen by the parties by alternately
17 eliminating names from such list. Who eliminates first shall be determined by
18 coin toss. The arbitrator shall render a final, binding, written decision resolving
19 unresolved issues pursuant to R.S. 23:861.16(5) and the Louisiana Binding
20 Arbitration Law no later than thirty days after the arbitrator has been notified
21 of his selection by the parties. The costs of an arbitrator and the arbitrator's
22 related costs conducted pursuant to this Subsection shall be shared equally by
23 the parties. Each party shall be responsible for bearing the cost of presenting
24 its case. The decision shall be subject to judicial review pursuant to the standard
25 set forth in the Louisiana Binding Arbitration Law.

26 C. An appropriate governing body of an appropriate bargaining unit of
27 a political subdivision may enter into a written agreement with the exclusive
28 representative of the employees in such bargaining units setting forth an
29 alternative impasse resolution procedure.

1 D. In the event that an impasse continues after the expiration of a
2 contract, the existing contract shall continue in full force and effect until it is
3 replaced by a subsequent written agreement.

4 §861.16. Public employers; prohibited practices

5 A public employer or its representative shall not:

6 (1) Discriminate against a public employee with regard to terms and
7 conditions of employment because of the employee's membership in a labor
8 organization.

9 (2) Interfere with, restrain, or coerce a public employee in the exercise
10 of a right guaranteed pursuant to this Part.

11 (3) Dominate or interfere in the formation, existence, or administration
12 of a labor organization.

13 (4) Discriminate in regard to hiring, tenure, or a term or condition of
14 employment in order to encourage or discourage membership in a labor
15 organization.

16 (5) Discharge or otherwise discriminate against a public employee
17 because he has signed or filed an affidavit, petition, grievance, or complaint or
18 given information or testimony pursuant to the provisions of this Part or
19 because a public employee is forming, joining, or choosing to be represented by
20 a labor organization.

21 (6) Refuse to bargain collectively in good faith with the exclusive
22 representative.

23 (7) Expend or cause the expenditure of public funds to any external
24 agent, individual, firm, agency, partnership, or association in any attempt to
25 influence the outcome of a representation election held pursuant to this Part.

26 (8) Refuse or fail to comply with a provision of this Part or board rule.

27 (9) Refuse or fail to comply with a collective bargaining agreement.

28 §861.17. Public employees; labor organizations; prohibited practices

29 A public employee or labor organization or its representative shall not:

1 (1) Discriminate against a public employee with regard to labor
2 organization membership because of race, color, religion, creed, age, sex, or
3 national origin.

4 (2) Interfere with, restrain, or coerce any public employee in the exercise
5 of a right guaranteed pursuant to the provisions of this Part.

6 (3) Refuse to bargain collectively in good faith with a public employer.

7 (4) Refuse or fail to comply with a collective bargaining agreement or
8 other agreement with the public employer.

9 (5) Refuse or fail to comply with any provision of this Part.

10 §861.18. Strikes and lockouts prohibited

11 A. A public employee or labor organization shall not engage in a strike.

12 B. A public employer shall not engage in a lockout.

13 C. A public employer may apply to the district court for injunctive relief
14 to end a strike, and an exclusive representative of public employees affected by
15 a lockout may apply to the district court for injunctive relief to end a lockout.

16 §861.19. Agreements valid; enforcement

17 Collective bargaining agreements and other agreements between
18 appropriate governing bodies and exclusive representatives shall be valid and
19 enforceable according to the terms of the agreements when entered into in
20 accordance with the provisions of this Part.

21 §861.20. Judicial enforcement; standard of review

22 A. The board may request the district court to enforce orders issued
23 pursuant to this Part, including those for appropriate temporary relief and
24 restraining orders. The court shall consider the request for enforcement on the
25 record made before the board. The court shall uphold the action of the board
26 and take appropriate action to enforce it unless it concludes that the order is
27 either:

28 (1) Arbitrary, capricious, or an abuse of discretion.

29 (2) Not supported by substantial evidence on the record considered as a

1 whole.

2 (3) Otherwise not in accordance with law.

3 B. A person or party, including a labor organization affected by a final
4 rule, order, or decision of the board, may appeal to the district court for further
5 relief. All such appeals shall be based upon the record made at the board
6 hearing. All such appeals to the district court shall be taken within thirty days
7 of the date of the final rule, order, or decision of the board. Actions taken by the
8 board shall be affirmed unless the court concludes that the action is either:

9 (1) Arbitrary, capricious, or an abuse of discretion.

10 (2) Not supported by substantial evidence on the record considered as a
11 whole.

12 (3) Otherwise not in accordance with law.

13 §861.21. Existing collective bargaining agreements; collective bargaining units

14 Nothing in this Part shall be construed to annul or modify a collective
15 bargaining agreement entered into between a public employer and an exclusive
16 representative prior to July 1, 2016. Nor shall anything in this Part be construed
17 to annul or modify the status of an existing or recognized exclusive
18 representative.

19 Section 2. R.S. 36:4(BB) is hereby enacted to read as follows:

20 §4. Structure of executive branch of state government

21 * * *

22 BB. The Public Employees Labor Relations Board (R.S. 23:861.7) shall
23 be placed within the office of the governor and shall perform and exercise its
24 powers, duties, functions, and responsibilities as provided by law.

25 * * *

26 Section 3. The Act shall become effective on July 1, 2016.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

SB 438 Original 2016 Regular Session Peterson

Proposed law enacts the "Public Employee Partnership Act".

Proposed law authorizes public employees to form, join, or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint, or coercion and to refuse any such activities.

Proposed law, provides that, unless limited by the provisions of state or federal law, authorizes a public employer to:

- (1) Direct the work of, hire, promote, assign, transfer, demote, suspend, discharge, or terminate a public employee for just cause.
- (2) Determine qualifications for employment and the nature and content of personnel examinations.
- (3) Take actions as may be necessary to carry out the mission of the public employer in emergencies.
- (4) Retain all rights not specifically limited by a collective bargaining agreement or by proposed law.

Proposed law creates the Public Employees Labor Relations Board within the office of the governor, consisting of three members, serving three-year terms, appointed by the governor subject to Senate confirmation. Provides that no member shall hold or be a candidate for an elected public office while serving on the board.

Proposed law provides that the board shall administer proposed law and shall promulgate rules necessary to accomplish and perform its functions and duties, including the establishment of procedures for:

- (1) The designation of appropriate bargaining units.
- (2) The selection, certification, and decertification of exclusive representatives.
- (3) The filing of, hearing on, and determination of complaints of prohibited practices.

Proposed law requires that the board:

- (1) Hold hearings and make inquiries necessary to conduct its functions and duties.
- (2) Conduct studies on problems pertaining to employee-employer relations.
- (3) Request from public employers and labor organizations the information and data necessary to carry out the board's functions and responsibilities.

Proposed law provides that the board shall decide issues by majority vote and shall issue its decisions in the form of written orders and opinions.

Authorizes the board:

- (1) To hire personnel or contract with third parties as it deems necessary to assist it in

carrying out its functions.

- (2) To enforce proposed law through the imposition of appropriate administrative remedies.
- (3) To issue subpoenas.

Proposed law provides that a board rule shall not require, directly or indirectly, as a condition of continuous employment, a public employee covered by proposed law to join a labor organization that is certified as an exclusive representative.

Proposed law authorizes the board to hold hearings for the purposes of:

- (1) Information gathering and inquiry.
- (2) Adopting rules.
- (3) Adjudicating disputes and enforcing proposed law and rules adopted pursuant thereto.

Proposed law provides that a rule proposed to be adopted by the board that affects a person or governmental entity outside of the board and its staff shall not be adopted, amended, or repealed without public hearing and comment on the proposed action before the board. Provides that except as otherwise provided in proposed law, all rules shall be proposed, adopted, and promulgated in accordance with the Administrative Procedure Act.

Proposed law requires that a verbatim record made by electronic or other suitable means be made of every rulemaking and adjudicatory hearing, and such records be maintained for a period of not less than three years. The record shall not be transcribed unless required for judicial review or unless ordered by the board.

Proposed law requires that the board, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining units for collective bargaining. Appropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved.

Proposed law provides that either party may notify the board in writing of a disagreement arising between a public employer and a labor organization concerning the composition of an appropriate bargaining unit. Requires that the board notify both parties within 10 business days that a disagreement has been filed and hold a hearing within 30 days after the notification concerning the composition of the bargaining unit before designating an appropriate bargaining unit.

Proposed law provides that whenever, in accordance with board rules, a petition is filed with the board by a labor organization containing the signatures of at least 30% of the public employees in an appropriate bargaining unit, the board shall conduct a secret ballot representation election to determine whether and by which labor organization the public employees in the appropriate bargaining unit shall be represented. Requires that the ballot shall contain the name of any labor organization submitting a petition containing signatures of at least 30% of the public employees in the appropriate bargaining unit and a provision allowing a public employee to indicate that he does not desire to be represented by a labor organization. Requires that election results be determined by the majority of the votes cast in the appropriate bargaining unit.

Proposed law provides that once a labor organization has filed a valid petition with the board calling for a representation election, other labor organizations may seek to be placed on the ballot by filing a petition containing the signatures of not less than 20% of the public

employees in the appropriate bargaining unit no later than 10 days after the board and the public employer post a written notice that the petition has been filed by a labor organization. Provides that if a labor organization receives a majority of votes cast, it shall be certified as the exclusive representative of all public employees in the appropriate bargaining unit. Provides for a runoff election between the two choices receiving the largest number of votes cast if no organization receives a majority within 15 days. Requires the board to certify the results of the election, and, when a labor organization receives a majority of the votes cast, the board shall certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit.

Proposed law provides that an election shall not be conducted if an election or runoff election has been conducted in the 12-month period immediately preceding the proposed representation election. Prohibits an election being held during the term of an existing collective bargaining agreement, except as provided in the impasse provisions of proposed law.

Proposed law provides that a labor organization that has been certified by the board as representing the public employees in the appropriate bargaining unit shall be the exclusive representative of all public employees in the appropriate bargaining unit which shall act for all public employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering all public employees in the appropriate bargaining unit.

Proposed law provides that a member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if 35% of the public employees in the appropriate bargaining unit make a written request to the board for a decertification election. Decertification elections shall be held in a manner prescribed by board rule.

Proposed law provides that, except for retirement programs, provided by state and statewide retirement systems or other such matters specifically covered by state law, appropriate governing bodies and exclusive representatives:

- (1) Shall bargain in good faith on wages, hours, and all other terms and conditions of employment and other issues agreed to by the parties. However, neither the appropriate governing body nor the exclusive representative shall be required to agree to a proposal or to make a concession.
- (2) Shall enter into written collective bargaining agreements covering employment relations.

Proposed law provides that the obligation to bargain collectively shall not be construed as authorizing an appropriate governing body and an exclusive representative to enter into an agreement that is in conflict with the provisions of any other state law. Specifies that in the event of conflict between the provisions of any other state law and an agreement entered into by the appropriate governing body and the exclusive representative in collective bargaining, state law prevails.

Proposed law provides that the amount of dues shall be certified in writing by an official of the labor organization. Requires the public employer to honor payroll deductions until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and for so long as the labor organization is certified as the exclusive representative. Prohibits the public employer from deducting dues for any other labor organization during the time that a board certification is in effect for a particular appropriate bargaining unit.

Proposed law provides that the scope of bargaining for public schools as well as educational employees in state agencies shall include, as a mandatory subject of bargaining, the impact of professional and instructional decisions made by the employer.

Proposed law provides that an impasse resolution or an agreement provision between an appropriate governing body and an exclusive representative that requires the expenditure of funds shall not be contingent upon the specific appropriation of funds by the legislature and the availability of funds.

Proposed law requires that an agreement include a grievance procedure to be used for the settlement of disputes pertaining to employment terms and conditions and related personnel matters which shall provide for a final and binding determination. Provides the final determination constitutes an arbitration award within the meaning of the La. Binding Arbitration Law; subject to judicial review pursuant to the standard set forth in the La. Binding Arbitration Law. Requires that the costs of an arbitration proceeding be shared equally by the parties.

Proposed law requires the following meetings may be closed:

- (1) Meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the appropriate governing body and the exclusive representative of the public employees of the appropriate bargaining unit.
- (2) Collective bargaining sessions.
- (3) Consultations and impasse resolution procedures at which the appropriate governing body and the exclusive representative of the appropriate bargaining unit are present.

Proposed law requires that the following negotiations and impasse procedures be followed by the appropriate governing bodies of appropriate bargaining units of the state and exclusive representatives for employees in such units:

- (1) A request to the appropriate bargaining unit of the state for the commencement of initial negotiations to be filed in writing by the exclusive representative no later than June 1 of the year in which negotiations are to take place. Requires negotiations to begin no later than July 1 of that year.
- (2) In subsequent years, negotiations agreed to by the parties shall begin no later than August 1 following the submission of written notice to the state by the exclusive representative no later than July 1 of the year in which negotiations are to take place.
- (3) If an impasse occurs during negotiations between the parties, and if an agreement is not reached by the parties by October 1, either party may request mediation services from the board. Requires that a mediator from the federal mediation and conciliation service be assigned by the board to assist in negotiations unless the parties agree to another mediator.
- (4) The mediator shall provide services to the parties until the parties reach agreement or the mediator believes that mediation services are no longer helpful or until November 1, whichever occurs first.
- (5) If the impasse continues after November 1, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately eliminating names from such list. Who eliminates first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to R.S. 23:861.16(5) and the La. Binding Arbitration Law no later than 30 days after the arbitrator has been notified of his selection by the parties. The costs of an arbitrator and the arbitrator's related costs shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the La. Binding Arbitration Law.

Proposed law provides that the following impasse procedures be followed by all appropriate governing bodies of appropriate bargaining units of political subdivisions and exclusive representatives of the employees in such units:

- (1) If an impasse occurs, either party may request from the board that a mediator be assigned to the negotiations unless the parties can agree on a mediator. A mediator with the federal mediation and conciliation service shall be assigned by the board to assist negotiations unless the parties agree to another mediator.
- (2) If the impasse continues after a 30-day mediation period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately eliminating names from such list. Who eliminates first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to R.S. 23:861.16(5) and the La. Binding Arbitration Law no later than 30 days after the arbitrator has been notified of his selection by the parties. The costs of an arbitrator and the arbitrator's related costs shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the La. Binding Arbitration Law.

Proposed law provides that an appropriate governing body of an appropriate bargaining unit of a political subdivision may enter into a written agreement with the exclusive representative of the employees in such bargaining units setting forth an alternative impasse resolution procedure.

Proposed law provides that in the event that an impasse continues after the expiration of a contract, the existing contract shall continue in full force and effect until it is replaced by a subsequent written agreement.

Proposed law prohibits a public employer or its representative from:

- (1) Discriminating against a public employee with regard to terms and conditions of employment because of the employee's membership in a labor organization.
- (2) Interfering with, restraining, or coercing a public employee in the exercise of a right guaranteed pursuant to proposed law.
- (3) Dominating or interfering in the formation, existence, or administration of a labor organization.
- (4) Discriminating in regard to hiring, tenure, or a term or condition of employment in order to encourage or discourage membership in a labor organization.
- (5) Discharging or otherwise discriminating against a public employee because he has signed or filed an affidavit, petition, grievance, or complaint or given information or testimony pursuant to proposed law or because a public employee is forming, joining, or choosing to be represented by a labor organization.
- (6) Refusing to bargain collectively in good faith with the exclusive representative.
- (7) Expending or causing the expenditure of public funds to any external agent, individual, firm, agency, partnership, or association in any attempt to influence the outcome of a representation election.
- (8) Refusing or failing to comply with proposed law or board rule.
- (9) Refusing or failing to comply with a collective bargaining agreement.

Proposed law prohibits a public employee or labor organization or its representative from:

- (1) Discriminating against a public employee with regard to labor organization membership because of race, color, religion, creed, age, sex, or national origin.
- (2) Interfering with, restraining, or coercing any public employee in the exercise of a right guaranteed pursuant to proposed law.
- (3) Refusing to bargain collectively in good faith with a public employer.
- (4) Refusing or failing to comply with a collective bargaining agreement or other agreement with the public employer.
- (5) Refusing or failing to comply with proposed law.

Proposed law provides that:

- (1) A public employee or labor organization shall not engage in a strike.
- (2) A public employer shall not engage in a lockout.
- (3) A public employer may apply to the district court for injunctive relief to end a strike, and an exclusive representative of public employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.

Proposed law provides that collective bargaining agreements and other agreements between appropriate governing bodies and exclusive representatives shall be valid and enforceable according to the terms of the agreements when entered into in accordance with proposed law.

Proposed law authorizes the board to request the district court to enforce orders issued pursuant to proposed law, including those for appropriate temporary relief and restraining orders which shall consider the request on the record made before the board. Requires the court to uphold the action of the board and take appropriate action to enforce it unless it concludes that the order is either:

- (1) Arbitrary, capricious, or an abuse of discretion.
- (2) Not supported by substantial evidence on the record considered as a whole.
- (3) Otherwise not in accordance with law.

Proposed law authorizes a person or party, including a labor organization affected by a final rule, order, or decision of the board, to appeal to the district court for further relief that shall be based upon the record made at the board hearing. Requires all such appeals to be taken within 30 days of the date of the final rule, order, or decision of the board. Requires the court to affirm the board actions unless the court concludes that the action is either:

- (1) Arbitrary, capricious, or an abuse of discretion.
- (2) Not supported by substantial evidence on the record considered as a whole.
- (3) Otherwise not in accordance with law.

Proposed law provides that nothing in proposed law shall be construed to annul or modify a collective bargaining agreement entered into between a public employer and an exclusive representative prior to July 1, 2016, or to annul or modify the status of an existing or recognized exclusive representative.

Proposed law provides that in the event of conflict with other law or regulation, the provisions of proposed law shall supersede other previously enacted laws and regulations; provided that proposed law shall not supersede any provision of applicable civil service law.

Effective July 1, 2016.

(Adds R.S. 23:861-861.21 and R.S. 36:4(BB))