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

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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) Expendng 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))