

1 SENATE BILL 179

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Stuart Ingle

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9  
10 AN ACT

11 RELATING TO LABOR; ENACTING THE EMPLOYEE PREFERENCE ACT;  
12 PROVIDING FOR ENFORCEMENT OF AND PENALTIES FOR VIOLATION OF THE  
13 EMPLOYEE PREFERENCE ACT; AMENDING SECTIONS OF THE PUBLIC  
14 EMPLOYEE BARGAINING ACT; PROHIBITING MANDATORY LABOR  
15 ORGANIZATION MEMBERSHIP OR PAYMENT TO A LABOR ORGANIZATION AS A  
16 CONDITION OF PUBLIC EMPLOYMENT; PROVIDING FOR SEVERABILITY.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
20 through 12 of this act may be cited as the "Employee Preference  
21 Act".

22 SECTION 2. [NEW MATERIAL] PUBLIC POLICY.--It is the  
23 public policy of New Mexico that all persons shall have, and  
24 shall be protected in the exercise of, the right to form, join  
25 or assist labor organizations or to refrain from those

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1 activities, freely and without fear of penalty or reprisal.

2 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
3 Employee Preference Act:

4 A. "employer" means a person or the state; a  
5 political subdivision of the state that includes, among other  
6 subdivisions, a municipality that has adopted a home rule  
7 charter; school districts; and post-secondary public  
8 educational institutions that include, among other  
9 institutions, state educational institutions pursuant to  
10 Article 12, Section 11 of the constitution of New Mexico; and

11 B. "labor organization" means a union,  
12 organization, agency or employee representation committee that  
13 exists for the purpose, in whole or in part, of dealing with  
14 employers concerning wages, rates of pay, hours of work or  
15 other conditions of employment.

16 SECTION 4. [NEW MATERIAL] MANDATORY MEMBERSHIP AND FEES  
17 PROHIBITED.--A person shall not be required, as a condition of  
18 hiring, promotion or continued employment, to:

19 A. become or remain a member of a labor  
20 organization; or

21 B. pay dues, fees, assessments or other charges to  
22 a labor organization or to a charity or other third party, in  
23 lieu of payment to a labor organization.

24 SECTION 5. [NEW MATERIAL] ORGANIZATION APPROVAL  
25 PROHIBITED.--An employer shall not require a person to be

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1 recommended or approved by or to be cleared through a labor  
2 organization as a condition of hiring, promotion or continued  
3 employment.

4 SECTION 6. [NEW MATERIAL] CERTAIN AGREEMENTS ILLEGAL.--An  
5 agreement, understanding or practice, written or oral, implied  
6 or expressed, between an employer and a labor organization that  
7 is in violation of the Employee Preference Act is unlawful.

8 SECTION 7. [NEW MATERIAL] INVESTIGATION.--The attorney  
9 general and district attorneys shall investigate complaints of  
10 violations of the Employee Preference Act and shall prosecute a  
11 person suspected of violating that act.

12 SECTION 8. [NEW MATERIAL] ENFORCEMENT.--If, as a result  
13 of investigation, the attorney general or a district attorney  
14 has good cause to believe that a person is violating or will  
15 violate a provision of the Employee Preference Act, the  
16 attorney general or district attorney may bring an action for  
17 injunctive or other appropriate relief in the district court  
18 for the county in which the violation is occurring or will  
19 occur or in the district court for Santa Fe county.

20 SECTION 9. [NEW MATERIAL] PENALTY.--A person who violates  
21 a provision of the Employee Preference Act is guilty of a  
22 misdemeanor and upon conviction shall be punished by a fine of  
23 not more than one thousand dollars (\$1,000) or by imprisonment  
24 for a definite term not to exceed ninety days or both.

25 SECTION 10. [NEW MATERIAL] REMEDIES.--

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1           A. A person injured or threatened with injury as a  
2 result of a violation or threatened violation of the provisions  
3 of the Employee Preference Act shall be entitled to injunctive  
4 relief against any and all violators or persons threatening the  
5 violation.

6           B. A person injured as a result of a violation or  
7 threatened violation of the provisions of the Employee  
8 Preference Act may recover any and all damages, including costs  
9 and reasonable attorney fees, of any character resulting from  
10 the violation or threatened violation.

11           C. Remedies pursuant to this section shall be  
12 independent of and in addition to any other penalty or remedy  
13 prescribed in the Employee Preference Act.

14           **SECTION 11. [NEW MATERIAL] EXCEPTIONS.**--The provisions of  
15 the Employee Preference Act shall not apply to employers and  
16 employees covered by the federal Railway Labor Act; to federal  
17 employers and employees; to employers and employees on  
18 exclusive federal enclaves; or where they would otherwise  
19 conflict with, or be preempted by, federal law.

20           **SECTION 12. [NEW MATERIAL] SEVERABILITY.**--If any part or  
21 application of the Employee Preference Act is held invalid, the  
22 remainder or its application to other situations and persons  
23 shall not be affected.

24           **SECTION 13.** Section 10-7E-4 NMSA 1978 (being Laws 2003,  
25 Chapter 4, Section 4 and Laws 2003, Chapter 5, Section 4) is

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1 amended to read:

2 "10-7E-4. DEFINITIONS.--As used in the Public Employee  
3 Bargaining Act:

4 A. "appropriate bargaining unit" means a group of  
5 public employees designated by the board or local board for the  
6 purpose of collective bargaining;

7 B. "appropriate governing body" means the  
8 policymaking body or individual representing a public employer  
9 as designated in Section [~~7 of the Public Employee Bargaining~~  
10 ~~Act~~] 10-7E-7 NMSA 1978;

11 C. "authorization card" means a signed affirmation  
12 by a member of an appropriate bargaining unit designating a  
13 particular organization as exclusive representative;

14 D. "board" means the public employee labor  
15 relations board;

16 E. "certification" means the designation by the  
17 board or local board of a labor organization as the exclusive  
18 representative for all public employees in an appropriate  
19 bargaining unit;

20 F. "collective bargaining" means the act of  
21 negotiating between a public employer and an exclusive  
22 representative for the purpose of entering into a written  
23 agreement regarding wages, hours and other terms and conditions  
24 of employment;

25 G. "confidential employee" means a person who

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1 devotes a majority of [~~his~~] the person's time to assisting and  
2 acting in a confidential capacity with respect to a person who  
3 formulates, determines and effectuates management policies;

4 H. "emergency" means a one-time crisis that was  
5 unforeseen and unavoidable;

6 I. "exclusive representative" means a labor  
7 organization that, as a result of certification, has the right  
8 to represent all public employees in an appropriate bargaining  
9 unit for the purposes of collective bargaining;

10 ~~[J. "fair share" means the payment to a labor  
11 organization, which is the exclusive representative for an  
12 appropriate bargaining unit, by an employee of that bargaining  
13 unit who is not a member of that labor organization equal to a  
14 certain percentage of membership dues. Such figure is to be  
15 calculated based on United States and New Mexico statutes and  
16 case law identifying those expenditures by a labor organization  
17 which are permissibly chargeable to all employees in the  
18 appropriate bargaining unit under United States and New Mexico  
19 statutes and case law, including but not limited to all  
20 expenditures incurred by the labor organization in negotiating  
21 the contract applicable to all employees in the appropriate  
22 bargaining unit, servicing such contract and representing all  
23 such employees in grievances and disciplinary actions;~~

24 ~~K.]~~ J. "impasse" means failure of a public employer  
25 and an exclusive representative, after good-faith bargaining,

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1 to reach agreement in the course of negotiating a collective  
2 bargaining agreement;

3 ~~[H-]~~ K. "labor organization" means an employee  
4 organization, one of whose purposes is the representation of  
5 public employees in collective bargaining and in otherwise  
6 meeting, consulting and conferring with employers on matters  
7 pertaining to employment relations;

8 ~~[M-]~~ L. "local board" means a local labor relations  
9 board established by a public employer, other than the state,  
10 through ordinance, resolution or charter amendment;

11 ~~[N-]~~ M. "lockout" means an act by a public employer  
12 to prevent its employees from going to work for the purpose of  
13 resisting the demands of the employees' exclusive  
14 representative or for the purpose of gaining a concession from  
15 the exclusive representative;

16 ~~[O-]~~ N. "management employee" means an employee who  
17 is engaged primarily in executive and management functions and  
18 is charged with the responsibility of developing, administering  
19 or effectuating management policies. An employee shall not be  
20 deemed a management employee solely because the employee  
21 participates in cooperative decision-making programs on an  
22 occasional basis;

23 ~~[P-]~~ O. "mediation" means assistance by an  
24 impartial third party to resolve an impasse between a public  
25 employer and an exclusive representative regarding employment

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1 relations through interpretation, suggestion and advice;

2 [Q-] P. "professional employee" means an employee  
3 whose work is predominantly intellectual and varied in  
4 character and whose work involves the consistent exercise of  
5 discretion and judgment in its performance and requires  
6 knowledge of an advanced nature in a field of learning  
7 customarily requiring specialized study at an institution of  
8 higher education or its equivalent. The work of a professional  
9 employee is of such character that the output or result  
10 accomplished cannot be standardized in relation to a given  
11 period of time;

12 [R-] Q. "public employee" means a regular  
13 nonprobationary employee of a public employer; provided that,  
14 in the public schools, "public employee" shall also include a  
15 regular probationary employee;

16 [S-] R. "public employer" means the state or a  
17 political subdivision thereof, including a municipality that  
18 has adopted a home rule charter, and does not include a  
19 government of an Indian nation, tribe or pueblo, provided that  
20 state educational institutions as provided in Article 12,  
21 Section 11 of the constitution of New Mexico shall be  
22 considered public employers other than the state for collective  
23 bargaining purposes only;

24 [T-] S. "strike" means a public employee's refusal,  
25 in concerted action with other public employees, to report for

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1 duty or [~~his~~] the willful absence in whole or in part from the  
2 full, faithful and proper performance of the duties of  
3 employment for the purpose of inducing, influencing or coercing  
4 a change in the conditions, compensation, rights, privileges or  
5 obligations of public employment; and

6 [~~U-~~] T. "supervisor" means an employee who devotes  
7 a majority of work time to supervisory duties, who customarily  
8 and regularly directs the work of two or more other employees  
9 and who has the authority in the interest of the employer to  
10 hire, promote or discipline other employees or to recommend  
11 such actions effectively, but "supervisor" does not include an  
12 individual who performs merely routine, incidental or clerical  
13 duties or who occasionally assumes a supervisory or directory  
14 role or whose duties are substantially similar to those of  
15 [~~his~~] the individual's subordinates and does not include a lead  
16 employee or an employee who participates in peer review or  
17 occasional employee evaluation programs."

18 **SECTION 14.** Section 10-7E-5 NMSA 1978 (being Laws 2003,  
19 Chapter 4, Section 5 and Laws 2003, Chapter 5, Section 5) is  
20 amended to read:

21 "10-7E-5. RIGHTS OF PUBLIC EMPLOYEES.--

22 A. Public employees, other than management  
23 employees and confidential employees, may form, join or assist  
24 a labor organization for the purpose of collective bargaining  
25 through representatives chosen by public employees without

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1 interference, restraint or coercion and shall have the right to  
2 refuse any such activities.

3 B. A public employer shall not require a public  
4 employee, as a condition of hiring, promotion or continued  
5 employment, to become or remain a member of a labor  
6 organization or to pay dues, fees, assessments or other charges  
7 to a labor organization or to a charity or other third party,  
8 in lieu of payment to a labor organization."

9 SECTION 15. Section 10-7E-9 NMSA 1978 (being Laws 2003,  
10 Chapter 4, Section 9 and Laws 2003, Chapter 5, Section 9) is  
11 amended to read:

12 "10-7E-9. BOARD--POWERS AND DUTIES.--

13 A. The board shall promulgate rules necessary to  
14 accomplish and perform its functions and duties as established  
15 in the Public Employee Bargaining Act, including the  
16 establishment of procedures for:

17 (1) the designation of appropriate bargaining  
18 units;

19 (2) the selection, certification and  
20 decertification of exclusive representatives; and

21 (3) the filing of, hearing on and  
22 determination of complaints of prohibited practices.

23 B. The board shall:

24 (1) hold hearings and make inquiries necessary  
25 to carry out its functions and duties;

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1                   (2) conduct studies on problems pertaining to  
2 employee-employer relations; and

3                   (3) request from public employers and labor  
4 organizations the information and data necessary to carry out  
5 the board's functions and responsibilities.

6                   C. The board may issue subpoenas requiring, upon  
7 reasonable notice, the attendance and testimony of witnesses  
8 and the production of evidence, including books, records,  
9 correspondence or documents relating to the matter in question.  
10 The board may prescribe the form of subpoena, but it shall  
11 adhere insofar as practicable to the form used in civil actions  
12 in the district court. The board may administer oaths and  
13 affirmations, examine witnesses and receive evidence.

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

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

20                   F. The board has the power to enforce provisions of  
21 the Public Employee Bargaining Act through the imposition of  
22 appropriate administrative remedies.

23                   G. A rule promulgated by the board or a local board  
24 shall not require, directly or indirectly, as a condition of  
25 continuous employment, a public employee covered by the Public

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1 Employee Bargaining Act to pay money to a labor organization  
2 that is certified as an exclusive representative. [~~The issue~~  
3 ~~of fair share shall be left a permissive subject of bargaining~~  
4 ~~by the public employer and the exclusive representative of each~~  
5 ~~bargaining unit.]"~~

6 SECTION 16. Section 10-7E-19 NMSA 1978 (being Laws 2003,  
7 Chapter 4, Section 19 and Laws 2003, Chapter 5, Section 19) is  
8 amended to read:

9 "10-7E-19. PUBLIC EMPLOYERS--PROHIBITED PRACTICES.--A  
10 public employer or [~~his~~] the public employer's representative  
11 shall not:

12 A. discriminate against a public employee with  
13 regard to terms and conditions of employment because of the  
14 employee's membership or nonmembership in a labor organization;

15 B. interfere with, restrain or coerce a public  
16 employee in the exercise of a right guaranteed pursuant to the  
17 Public Employee Bargaining Act;

18 C. dominate or interfere in the formation,  
19 existence or administration of a labor organization;

20 D. discriminate in regard to hiring, tenure or a  
21 term or condition of employment in order to encourage or  
22 discourage membership in a labor organization;

23 E. discharge or otherwise discriminate against a  
24 public employee because [~~he~~] the employee has signed or filed  
25 an affidavit, petition, grievance or complaint or given

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1 information or testimony pursuant to the provisions of the  
2 Public Employee Bargaining Act or because a public employee is  
3 forming, joining or choosing to be represented by a labor  
4 organization;

5 F. refuse to bargain collectively in good faith  
6 with the exclusive representative;

7 G. refuse or fail to comply with a provision of the  
8 Public Employee Bargaining Act or board rule; or

9 H. refuse or fail to comply with a collective  
10 bargaining agreement."

11 SECTION 17. Section 10-7E-26 NMSA 1978 (being Laws 2003,  
12 Chapter 4, Section 26 and Laws 2003, Chapter 5, Section 26) is  
13 amended to read:

14 "10-7E-26. EXISTING ORDINANCES PROVIDING FOR PUBLIC  
15 EMPLOYEE BARGAINING.--

16 A. A public employer other than the state that  
17 prior to October 1, 1991 adopted by ordinance, resolution or  
18 charter amendment a system of provisions and procedures  
19 permitting employees to form, join or assist a labor  
20 organization for the purpose of bargaining collectively through  
21 exclusive representatives may continue to operate under those  
22 provisions and procedures; provided that the employer shall  
23 comply with the provisions of Section 10-7E-5 NMSA 1978 in  
24 effect on and after the effective date of this 2018 act. Any  
25 substantial change after January 1, 2003 to any ordinance,

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1 resolution or charter amendment shall subject the public  
2 employer to full compliance with the provisions of Subsection B  
3 of this section [~~26 of the Public Employee Bargaining Act~~].

4 B. A public employer other than the state that  
5 subsequent to October 1, 1991 adopts by ordinance, resolution  
6 or charter amendment a system of provisions and procedures  
7 permitting employees to form, join or assist a labor  
8 organization for the purpose of bargaining collectively through  
9 exclusive representatives freely chosen by its employees may  
10 operate under those provisions and procedures rather than those  
11 set forth in the Public Employee Bargaining Act; provided that  
12 the employer shall comply with the provisions of Sections [~~8~~  
13 ~~through 12 and Subsection D of Section 17 of that act~~] 10-7E-5,  
14 10-7E-8 through 10-7E-12 NMSA 1978 and Subsection D of Section  
15 10-7E-17 NMSA 1978; and provided further that the following  
16 provisions and procedures are included in each ordinance,  
17 resolution or charter amendment:

18 (1) the right of public employees to form,  
19 join or assist employee organizations for the purpose of  
20 achieving collective bargaining and the right to refuse those  
21 activities, including, among other things, payment of dues,  
22 fees, assessments or other charges to a labor organization or  
23 to a charity or other third party in lieu of payment to a labor  
24 organization;

25 (2) procedures for the identification of

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1 appropriate bargaining units, certification elections and  
2 decertification elections equivalent to those set forth in the  
3 Public Employee Bargaining Act;

4 (3) the right of a labor organization to be  
5 certified as an exclusive representative;

6 (4) the right of an exclusive representative  
7 to negotiate all wages, hours and other terms and conditions of  
8 employment for public employees in the appropriate bargaining  
9 unit;

10 (5) the obligation to incorporate agreements  
11 reached by the public employer and the exclusive representative  
12 into a collective bargaining agreement;

13 (6) a requirement that grievance procedures  
14 culminating with binding arbitration be negotiated;

15 (7) a requirement that payroll deductions for  
16 the exclusive representative's membership dues be negotiated if  
17 requested by the exclusive representative;

18 (8) impasse resolution procedures equivalent  
19 to those set forth in Section [~~18 of the Public Employee~~  
20 ~~Bargaining Act~~] 10-7E-18 NMSA 1978; and

21 (9) prohibited practices for the public  
22 employer, public employees and labor organizations that promote  
23 the principles established in Sections [~~19 through 21 of the~~  
24 ~~Public Employee Bargaining Act~~] 10-7E-19 through 10-7E-21 NMSA  
25 1978."

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SECTION 18. A new section of the Public Employee Bargaining Act is enacted to read:

"~~[NEW MATERIAL]~~ SEVERABILITY.--If any part or application of the Public Employee Bargaining Act is held invalid, the remainder or its application to other situations and persons shall not be affected."

SECTION 19. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.