

1 HOUSE BILL 659

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Christine Trujillo

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9  
10 AN ACT

11 RELATING TO COLLECTIVE BARGAINING IN THE PUBLIC SECTOR;  
12 MODIFYING THE PUBLIC EMPLOYEE BARGAINING ACT TO CLARIFY  
13 REMEDIES AVAILABLE TO THE PUBLIC EMPLOYEE LABOR RELATIONS BOARD  
14 TO ENFORCE THE PUBLIC EMPLOYEE BARGAINING ACT; REQUIRING LOCAL  
15 LABOR RELATIONS BOARDS TO ENFORCE THE SAME PROVISIONS AS IN THE  
16 PUBLIC EMPLOYEE BARGAINING ACT.

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

19 SECTION 1. Section 10-7E-3 NMSA 1978 (being Laws 2003,  
20 Chapter 4, Section 3 and Laws 2003, Chapter 5, Section 3) is  
21 amended to read:

22 "10-7E-3. CONFLICTS.--In the event of conflict with other  
23 laws, the provisions of the Public Employee Bargaining Act and  
24 a collective bargaining agreement entered into pursuant to its  
25 provisions shall supersede other previously enacted legislation

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1 and ~~[regulations]~~ rules; provided that the Public Employee  
2 Bargaining Act shall not supersede the provisions of the  
3 Bateman Act, ~~[the Personnel Act, Sections 10-7-1 through~~  
4 ~~10-7-19 NMSA 1978]~~ the Group Benefits Act, the Per Diem and  
5 Mileage Act, the Retiree Health Care Act, public employee  
6 retirement laws or the Tort Claims Act."

7 SECTION 2. Section 10-7E-4 NMSA 1978 (being Laws 2003,  
8 Chapter 4, Section 4 and Laws 2003, Chapter 5, Section 4) is  
9 amended to read:

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

12 A. "appropriate bargaining unit" means a group of  
13 public employees designated by the board or local board for the  
14 purpose of collective bargaining;

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

19 C. "authorization card" means a signed affirmation  
20 by a member of an appropriate bargaining unit designating a  
21 particular organization as exclusive representative;

22 D. "board" means the public employee labor  
23 relations board;

24 E. "certification" means the designation by the  
25 board or local board of a labor organization as the exclusive

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1 representative for all public employees in an appropriate  
2 bargaining unit;

3 F. "collective bargaining" means the act of  
4 negotiating between a public employer and an exclusive  
5 representative for the purpose of entering into a written  
6 agreement regarding wages, hours and other terms and conditions  
7 of employment;

8 G. "confidential employee" means a person who  
9 devotes a majority of ~~[his]~~ the person's time to assisting and  
10 acting in a confidential capacity with respect to a person who  
11 formulates, determines and effectuates management policies;

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

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

18 J. "fair share" means the payment to a labor  
19 organization, which is the exclusive representative for an  
20 appropriate bargaining unit, by an employee of that bargaining  
21 unit who is not a member of that labor organization equal to a  
22 certain percentage of membership dues. Such figure is to be  
23 calculated based on United States and New Mexico statutes and  
24 case law identifying those expenditures by a labor organization  
25 which are permissibly chargeable to all employees in the

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1 appropriate bargaining unit under United States and New Mexico  
2 statutes and case law, including but not limited to all  
3 expenditures incurred by the labor organization in negotiating  
4 the contract applicable to all employees in the appropriate  
5 bargaining unit, servicing such contract and representing all  
6 such employees in grievances and disciplinary actions;

7 K. "impasse" means failure of a public employer and  
8 an exclusive representative, after good-faith bargaining, to  
9 reach agreement in the course of negotiating a collective  
10 bargaining agreement;

11 L. "labor organization" means an employee  
12 organization, one of whose purposes is the representation of  
13 public employees in collective bargaining and in otherwise  
14 meeting, consulting and conferring with employers on matters  
15 pertaining to employment relations;

16 M. "local board" means a local labor relations  
17 board established by a public employer, other than the state,  
18 through ordinance, resolution or charter amendment;

19 N. "lockout" means an act by a public employer to  
20 prevent its employees from going to work for the purpose of  
21 resisting the demands of the employees' exclusive  
22 representative or for the purpose of gaining a concession from  
23 the exclusive representative;

24 O. "management employee" means an employee who is  
25 engaged primarily in, and devotes a majority of the employee's

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1 work time to, executive and management functions and is charged  
2 with the responsibility of developing, administering or  
3 effectuating management policies. An employee shall not be  
4 deemed a management employee solely because the employee  
5 participates in cooperative decision-making programs [~~on an~~  
6 ~~occasional basis~~] or has responsibility for fiscal decisions;

7 P. "mediation" means assistance by an impartial  
8 third party to resolve an impasse between a public employer and  
9 an exclusive representative regarding employment relations  
10 through interpretation, suggestion and advice;

11 Q. "professional employee" means an employee whose  
12 work is predominantly intellectual and varied in character and  
13 whose work involves the consistent exercise of discretion and  
14 judgment in its performance and requires knowledge of an  
15 advanced nature in a field of learning customarily requiring  
16 specialized study at an institution of higher education or its  
17 equivalent. The work of a professional employee is of such  
18 character that the output or result accomplished cannot be  
19 standardized in relation to a given period of time;

20 R. "public employee" means a regular  
21 nonprobationary employee of a public employer; provided that,  
22 in the public schools, "public employee" shall also include a  
23 regular probationary employee;

24 S. "public employer" means the state or a political  
25 subdivision thereof, including a municipality that has adopted

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1 a home rule charter, and does not include a government of an  
2 Indian nation, tribe or pueblo; provided that state educational  
3 institutions as provided in Article 12, Section 11 of the  
4 constitution of New Mexico shall be considered public employers  
5 other than the state for collective bargaining purposes only;

6 T. "strike" means a public employee's refusal, in  
7 concerted action with other public employees, to report for  
8 duty or [~~his~~] the willful absence in whole or in part from the  
9 full, faithful and proper performance of the duties of  
10 employment for the purpose of inducing or influencing [~~or~~  
11 ~~coercing~~] a change in the conditions, compensation, rights,  
12 privileges or obligations of public employment; and

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

25 SECTION 3. Section 10-7E-5 NMSA 1978 (being Laws 2003,

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1 Chapter 4, Section 5 and Laws 2003, Chapter 5, Section 5) is  
2 amended to read:

3 "10-7E-5. RIGHTS OF PUBLIC EMPLOYEES.--

4 A. Public employees, other than management  
5 employees and confidential employees, may form, join or assist  
6 a labor organization for the purpose of collective bargaining  
7 through representatives chosen by public employees without  
8 interference, restraint or coercion and shall have the right to  
9 refuse any such activities.

10 B. Public employees, other than management  
11 employees and confidential employees, have the right to engage  
12 in other concerted activities for mutual aid or benefit."

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

16 "10-7E-9. BOARD--POWERS AND DUTIES.--

17 A. The board shall promulgate rules necessary to  
18 accomplish and perform its functions and duties as established  
19 in the Public Employee Bargaining Act, including the  
20 establishment of procedures for:

21 (1) the designation of appropriate bargaining  
22 units;

23 (2) the selection, certification and  
24 decertification of exclusive representatives; and

25 (3) the filing of, hearing on and

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1 determination of complaints of prohibited practices.

2 B. The board shall:

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

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

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

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

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

21 E. The board may hire personnel or contract with  
22 third parties as it deems necessary to assist it in carrying  
23 out its functions and may delegate any or all of its authority  
24 to such third parties, subject to final review of the board.

25 F. The board has the power to enforce provisions of

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1 the Public Employee Bargaining Act through the imposition of  
2 appropriate administrative remedies, compensatory damages, make  
3 whole relief or any other equitable remedy, declaratory or  
4 injunctive relief, provisional remedies, such as temporary  
5 restraining orders or preliminary injunctions, or other  
6 remedies appropriate under the circumstances.

7 G. A rule promulgated by the board or a local board  
8 shall not require, directly or indirectly, as a condition of  
9 continuous employment, a public employee covered by the Public  
10 Employee Bargaining Act to pay money to a labor organization  
11 that is certified as an exclusive representative. The issue of  
12 fair share shall be left a permissive subject of bargaining by  
13 the public employer and the exclusive representative of each  
14 bargaining unit."

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

18 "10-7E-10. LOCAL BOARD--CREATED.--

19 A. With the approval of the board, a public  
20 employer other than the state may, by ordinance, resolution or  
21 charter amendment, create a local board similar to the public  
22 employee labor relations board. Once created [~~and~~], approved  
23 and fully constituted pursuant to Subsection B of this section,  
24 the local board shall assume the duties and responsibilities of  
25 the public employee labor relations board. A local board shall

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1 follow all procedures and provisions of the Public Employee  
2 Bargaining Act unless otherwise approved by the board.

3 B. The local board shall be composed of three  
4 members appointed by the public employer. One member shall be  
5 appointed on the recommendation of individuals representing  
6 labor, one member shall be appointed on the recommendation of  
7 individuals representing management and one member shall be  
8 appointed on the recommendation of the first two appointees.

9 C. Local board members shall serve one-year terms.  
10 Local board members may serve an unlimited number of terms.  
11 Vacancies shall be filled in the same manner as the original  
12 appointment, and such appointments shall only be made for the  
13 remainder of the unexpired term.

14 D. During the term for which ~~[he]~~ a local board  
15 member is appointed, a local board member shall not hold or  
16 seek any other political office or public employment or be an  
17 employee of a union or an organization representing public  
18 employees or public employers.

19 E. Each local board member shall be paid per diem  
20 and mileage in accordance with the provisions of the Per Diem  
21 and Mileage Act."

22 SECTION 6. Section 10-7E-11 NMSA 1978 (being Laws 2003,  
23 Chapter 4, Section 11 and Laws 2003, Chapter 5, Section 11) is  
24 amended to read:

25 "10-7E-11. LOCAL BOARD--POWERS AND DUTIES.--

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1           A. The local board shall promulgate rules necessary  
2 to accomplish and perform its functions and duties as  
3 established in the Public Employee Bargaining Act, including  
4 the establishment of procedures for:

5                   (1) the designation of appropriate bargaining  
6 units;

7                   (2) the selection, certification and  
8 decertification of exclusive representatives; and

9                   (3) the filing of, hearing on and  
10 determination of complaints of prohibited practices.

11           B. Rules promulgated pursuant to this section shall  
12 conform to the greatest extent practicable with the rules  
13 adopted by the board and shall not be effective until approved  
14 by an order of the board.

15           ~~[B-]~~ C. The local board shall:

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

18                   (2) request information and data from public  
19 employers and labor organizations to carry out the local  
20 board's functions and responsibilities; and

21                   (3) hire personnel or contract with third  
22 parties as the appropriate governing body deems necessary to  
23 assist the local board in carrying out its functions.

24           ~~[C-]~~ D. The local board may issue subpoenas  
25 requiring, upon reasonable notice, the attendance and testimony

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1 of witnesses and the production of evidence, including books,  
2 records, correspondence or documents relating to the matter in  
3 question. The local board may prescribe the form of subpoena,  
4 but it shall adhere insofar as practicable to the form used in  
5 civil actions in the district court. The local board may  
6 administer oaths and affirmations, examine witnesses and  
7 receive evidence.

8 ~~[D-]~~ E. The local board shall decide all issues by  
9 majority vote and shall issue its decisions in the form of  
10 written orders and opinions.

11 F. The local board may hire personnel or contract  
12 with third parties as it deems necessary to assist it in  
13 carrying out its functions and may delegate any or all of its  
14 authority to such third parties, subject to final review of the  
15 local board.

16 ~~[E-]~~ G. The local board has the power to enforce  
17 provisions of the Public Employee Bargaining Act or a local  
18 collective bargaining ordinance, resolution or charter  
19 amendment through the imposition of appropriate administrative  
20 remedies, compensatory damages, make-whole relief or other  
21 equitable remedy, declaratory or injunctive relief, provisional  
22 remedies, including temporary restraining orders or preliminary  
23 injunctions, or other remedies appropriate under the  
24 circumstances."

25 SECTION 7. Section 10-7E-12 NMSA 1978 (being Laws 2003,

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1 Chapter 4, Section 12 and Laws 2003, Chapter 5, Section 12, as  
2 amended) is amended to read:

3 "10-7E-12. HEARING PROCEDURES.--

4 A. The board or local board may hold hearings for  
5 the purposes of:

- 6 (1) information gathering and inquiry;
  - 7 (2) adopting rules; and
  - 8 (3) adjudicating disputes and enforcing the
- 9 provisions of the Public Employee Bargaining Act and rules  
10 adopted pursuant to that act.

11 B. The board or local board shall adopt rules  
12 setting forth procedures to be followed during hearings of the  
13 board or local board. The procedures adopted for conducting  
14 adjudicatory hearings shall meet all minimal due process  
15 requirements of the state and federal constitutions. Rules  
16 adopted by a local board shall conform to the greatest extent  
17 practicable with the rules adopted by the board and shall not  
18 be effective until approved by an order of the board.

19 C. The board or local board may appoint a hearing  
20 examiner to conduct any adjudicatory hearing authorized by the  
21 board or local board. At the conclusion of the hearing, the  
22 examiner shall prepare a written report, including findings and  
23 recommendations, all of which shall be submitted to the board  
24 or local board for its decision.

25 D. A rule proposed to be adopted by the board or

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

19 E. All adopted rules shall be filed in accordance  
20 with applicable state statutes.

21 F. A verbatim record made by electronic or other  
22 suitable means shall be made of every rulemaking and  
23 adjudicatory hearing. The record shall not be transcribed  
24 unless required for judicial review or unless ordered by the  
25 board or local board."

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1           SECTION 8. Section 10-7E-14 NMSA 1978 (being Laws 2003,  
2 Chapter 4, Section 14 and Laws 2003, Chapter 5, Section 14) is  
3 amended to read:

4           "10-7E-14. ELECTIONS.--

5           A. Whenever, in accordance with rules prescribed by  
6 the board or local board, a petition is filed by a labor  
7 organization containing the signatures of at least thirty  
8 percent of the public employees in an appropriate bargaining  
9 unit, the board or local board shall conduct a secret ballot  
10 representation election to determine whether and by which labor  
11 organization the public employees in the appropriate bargaining  
12 unit shall be represented. The ballot shall contain the name  
13 of any labor organization submitting a petition containing  
14 signatures of at least thirty percent of the public employees  
15 in the appropriate bargaining unit. The ballot shall also  
16 contain a provision allowing public employees to indicate  
17 whether they do not desire to be represented by a labor  
18 organization. [~~An election shall only be valid if forty~~  
19 ~~percent of the eligible employees in the bargaining unit vote~~  
20 ~~in the election.]~~

21           B. Once a labor organization has filed a valid  
22 petition with the board or local board calling for a  
23 representation election, other labor organizations may seek to  
24 be placed on the ballot. Such an organization shall file a  
25 petition containing the signatures of not less than thirty

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1 percent of the public employees in the appropriate bargaining  
2 unit no later than ten days after the board or the local board  
3 and the public employer post a written notice that the petition  
4 in Subsection A of this section has been filed by a labor  
5 organization.

6 C. As an alternative to the provisions of  
7 Subsection A of this section, a public employer and a labor  
8 organization with a reasonable basis for claiming to represent  
9 a majority of the employees in an appropriate bargaining unit  
10 may establish an alternative appropriate procedure for  
11 determining majority status. The procedure may include a labor  
12 organization's submission of authorization cards from a  
13 majority of the employees in an appropriate bargaining unit.  
14 The board or local board shall not certify an appropriate  
15 bargaining unit if the public employer objects to the  
16 certification without an election.

17 D. If a labor organization receives a majority of  
18 votes cast, it shall be certified as the exclusive  
19 representative of all public employees in the appropriate  
20 bargaining unit. Within fifteen days of an election in which  
21 no labor organization receives a majority of the votes cast, a  
22 runoff election between the two choices receiving the largest  
23 number of votes cast shall be conducted. The board or local  
24 board shall certify the results of the election, and, when a  
25 labor organization receives a majority of the votes cast, the

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1 board or local board shall certify the labor organization as  
2 the exclusive representative of all public employees in the  
3 appropriate bargaining unit.

4 E. An election shall not be conducted if an  
5 election or runoff election has been conducted in the twelve-  
6 month period immediately preceding the proposed representation  
7 election. An election shall not be held during the term of an  
8 existing collective bargaining agreement, except as provided in  
9 Section ~~[16 of the Public Employee Bargaining Act]~~ 10-7E-16  
10 NMSA 1978."

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

14 "10-7E-15. EXCLUSIVE REPRESENTATION.--

15 A. A labor organization that has been certified by  
16 the board or local board as representing the public employees  
17 in the appropriate bargaining unit shall be the exclusive  
18 representative of all public employees in the appropriate  
19 bargaining unit. The exclusive representative shall act for  
20 all public employees in the appropriate bargaining unit and  
21 negotiate a collective bargaining agreement covering all public  
22 employees in the appropriate bargaining unit. The exclusive  
23 representative shall represent the interests of all public  
24 employees in the appropriate bargaining unit without  
25 discrimination or regard to membership in the labor

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1 organization. A claim by a public employee that the exclusive  
2 representative has violated this duty of fair representation  
3 shall be forever barred if not brought within six months of the  
4 date on which the public employee knew, or reasonably should  
5 have known, of the violation.

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

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

18 "10-7E-16. DECERTIFICATION OF EXCLUSIVE  
19 REPRESENTATIVE.--

20 A. A member of a labor organization or the labor  
21 organization itself may initiate decertification of a labor  
22 organization as the exclusive representative if thirty percent  
23 of the public employees in the appropriate bargaining unit make  
24 a written request to the board or local board for a  
25 decertification election. Decertification elections shall be

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1 held in a manner prescribed by rule of the board. An election  
2 shall only be valid if forty percent of the eligible employees  
3 in the bargaining unit vote in the election.

4 B. When there is a collective bargaining agreement  
5 in effect, a request for a decertification election shall be  
6 made to the board or local board no earlier than ninety days  
7 and no later than sixty days before the expiration of the  
8 collective bargaining agreement; provided, however, a request  
9 for an election may be filed at any time after the expiration  
10 of the third year of a collective bargaining agreement with a  
11 term of more than three years.

12 C. When, within the time period prescribed in  
13 Subsection B of this section, a competing labor organization  
14 files a petition containing signatures of at least thirty  
15 percent of the public employees in the appropriate bargaining  
16 unit, a representation election rather than a decertification  
17 election shall be conducted.

18 D. When an exclusive representative has been  
19 certified but no collective bargaining agreement is in effect,  
20 the board or local board shall not accept a request for a  
21 decertification election or an election sought by a competing  
22 labor organization earlier than twelve months subsequent to a  
23 labor organization's certification as the exclusive  
24 representative."

25 SECTION 11. Section 10-7E-17 NMSA 1978 (being Laws 2003,

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1 Chapter 4, Section 17 and Laws 2003, Chapter 5, Section 17) is  
2 amended to read:

3 "10-7E-17. SCOPE OF BARGAINING.--

4 A. Except for retirement programs provided pursuant  
5 to the Public Employees Retirement Act or the Educational  
6 Retirement Act, public employers and exclusive representatives:

7 (1) shall bargain in good faith on wages,  
8 hours and all other terms and conditions of employment and  
9 other issues agreed to by the parties. However, neither the  
10 public employer nor the exclusive representative shall be  
11 required to agree to a proposal or to make a concession; and

12 (2) shall enter into written collective  
13 bargaining agreements covering employment relations.

14 B. The obligation to bargain collectively imposed  
15 by the Public Employee Bargaining Act shall not be construed as  
16 authorizing a public employer and an exclusive representative  
17 to enter into an agreement that is in conflict with the  
18 provisions of any other statute of this state; provided,  
19 however, that a collective bargaining agreement that provides  
20 greater rights, remedies and procedures to public employees  
21 than contained in state statute shall not be considered to be  
22 in conflict with that state statute. In the event of an actual  
23 conflict between the provisions of any other statute of this  
24 state and an agreement entered into by the public employer and  
25 the exclusive representative in collective bargaining, the

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1 statutes of this state shall prevail.

2 C. Payroll deduction of the exclusive  
3 representative's membership dues shall be a mandatory subject  
4 of bargaining if either party chooses to negotiate the issue.  
5 The amount of dues shall be certified in writing by an official  
6 of the labor organization and shall not include special  
7 assessments, penalties or fines of any type. The public  
8 employer shall honor payroll deductions until the authorization  
9 is revoked in writing by the public employee in accordance with  
10 the negotiated agreement and for so long as the labor  
11 organization is certified as the exclusive representative.  
12 During the time that a board certification is in effect for a  
13 particular appropriate bargaining unit, the public employer  
14 shall not deduct dues for any other labor organization.

15 D. The scope of bargaining for representatives of  
16 public schools as well as educational employees in state  
17 agencies shall include, as a mandatory subject of bargaining,  
18 the impact of professional and instructional decisions made by  
19 the employer.

20 E. An impasse resolution or an agreement provision  
21 by the state and an exclusive representative that requires the  
22 expenditure of funds shall be contingent upon the [~~specific~~]  
23 appropriation of sufficient funds by the legislature [~~and the~~  
24 ~~availability of funds~~]. An impasse resolution or an agreement  
25 provision by a public employer other than the state or the

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1 public schools and an exclusive representative that requires  
2 the expenditure of funds shall be contingent upon the  
3 [~~specific~~] appropriation of sufficient funds by the appropriate  
4 governing body [~~and the availability of funds~~]. An agreement  
5 provision by a local school board and an exclusive  
6 representative that requires the expenditure of funds shall be  
7 contingent upon ratification by the appropriate governing body.  
8 An arbitration decision [~~shall not~~] may require the appropriate  
9 governing body to consider the reappropriation of funds.

10 F. An agreement shall include a grievance procedure  
11 to be used for the settlement of disputes pertaining to  
12 employment terms and conditions and related personnel matters.  
13 The grievance procedure shall provide for a final and binding  
14 determination. The final determination shall constitute an  
15 arbitration award within the meaning of the Uniform Arbitration  
16 Act; such award shall be subject to judicial review pursuant to  
17 the standard set forth in the Uniform Arbitration Act. The  
18 costs of an arbitration proceeding conducted pursuant to this  
19 subsection shall be shared equally by the parties.

20 G. The following meetings shall be closed:

21 (1) meetings for the discussion of bargaining  
22 strategy preliminary to collective bargaining negotiations  
23 between the public employer and the exclusive representative of  
24 the public employees of the public employer;

25 (2) collective bargaining sessions; and

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1 (3) consultations and impasse resolution  
2 procedures at which the public employer and the exclusive  
3 representative of the appropriate bargaining unit are present."

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

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

9 [A.] A public employer other than the state that  
10 prior to [~~October 1, 1991~~] January 1, 2003 adopted by  
11 ordinance, resolution or charter amendment a system of  
12 provisions and procedures permitting employees to form, join or  
13 assist a labor organization for the purpose of bargaining  
14 collectively through exclusive representatives may only  
15 continue to operate under those provisions and procedures if  
16 those provisions and procedures provide the same or greater  
17 rights to public employees and labor organizations as the  
18 Public Employee Bargaining Act, allow for the effective  
19 determination of, and remedies for, any action which would  
20 constitute a prohibited practice under the Public Employee  
21 Bargaining Act and contain impasse resolution procedures  
22 equivalent to those set forth in Section 10-7E-18 NMSA 1978. A  
23 public employer other than the state that prior to January 1,  
24 2003 adopted provisions and procedures by ordinance, resolution  
25 or charter amendment which do not meet the conditions of the

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1 previous sentence may cure that defect within ninety days of  
2 the effective date of this 2019 act, after which time the  
3 public employer may only operate under a local board if it  
4 adopts an ordinance, resolution or charter amendment pursuant  
5 to Subsection A of Section 10-7E-10 NMSA 1978. Any substantial  
6 change after [January 1, 2003] the effective date of this 2019  
7 act, apart from any change adopted during the ninety-day cure  
8 period specified in this section, to any ordinance, resolution  
9 or charter amendment shall [subject] require the public  
10 employer [to full compliance with the provisions of Subsection  
11 B of section 26 of the Public Employee Bargaining Act.

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

24 ~~(1) the right of public employees to form,~~  
25 ~~join or assist employee organizations for the purpose of~~

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1 ~~achieving collective bargaining;~~

2 ~~(2) procedures for the identification of~~  
3 ~~appropriate bargaining units, certification elections and~~  
4 ~~decertification elections equivalent to those set forth in the~~  
5 ~~Public Employee Bargaining Act;~~

6 ~~(3) the right of a labor organization to be~~  
7 ~~certified as an exclusive representative;~~

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

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

15 ~~(6) a requirement that grievance procedures~~  
16 ~~culminating with binding arbitration be negotiated;~~

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

20 ~~(8) impasse resolution procedures equivalent~~  
21 ~~to those set forth in Section 18 of the Public Employee~~  
22 ~~Bargaining Act; and~~

23 ~~(9) prohibited practices for the public~~  
24 ~~employer, public employees and labor organizations that promote~~  
25 ~~the principles established in Sections 19 through 21 of the~~

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~~[bracketed material]~~ = delete

1 ~~Public Employee Bargaining Act]~~ wishing to operate under a  
2 local board to adopt an ordinance, resolution or charter  
3 amendment pursuant to Subsection A of Section 10-7E-10 NMSA  
4 1978."

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