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State of New Mexico

Michelle Lujan Grisham
Governor

March 5, 2020

HOUSE EXECUTIVE MESSAGE NO. 79

The Honorable Brian Egolf, Jr., Speaker of the House and
Members of the House of Representatives
State Capitol Building
Santa Fe, NM 87501

Dear Speaker Egolf and Members of the House:

I have this day SIGNED:

HOUSE LABOR, VETERANS' AND MILITARY AFFAIRS COMMITTEE
SUBSTITUTE FOR HOUSE BILL 364;

enacted by the Fifty-Fourth Legislature, Second Session.

Respectfully yours,

Michelle Lujan Grisham
Governor

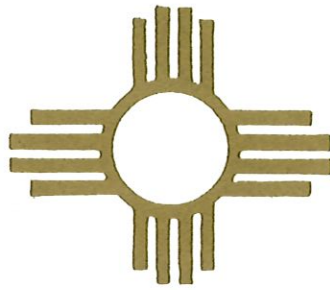
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Time: 10:25 a.m. p.m.
Date: March 5 2020

By 
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Time: _____ a.m. p.m.
Date: _____ 2020

By _____
Chief Clerk of the House



The Legislature of the State of New Mexico

54th Legislature, 2nd Session

LAWS 2020

CHAPTER 48

HOUSE LABOR, VETERANS' AND MILITARY AFFAIRS COMMITTEE SUBSTITUTE

FOR HOUSE BILL 364

Introduced by



CHAPTER 48

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
ADDRESSING COLLECTIVE BARGAINING IN THE PUBLIC SECTOR;
ADDRESSING BARGAINING UNIT ELECTION PROCEDURES, REASONABLE
ACCESS TO EMPLOYEES, SCOPE OF BARGAINING AND EMPLOYER
PROHIBITED PRACTICES; MODIFYING THE PUBLIC EMPLOYEE
BARGAINING ACT TO CLARIFY REMEDIES AVAILABLE TO THE PUBLIC
EMPLOYEE LABOR RELATIONS BOARD; IMPOSING REQUIREMENTS ON
LOCAL LABOR BOARDS; REQUIRING NOTICE OF RULES AND MEMBERSHIP;
PROVIDING FOR RETENTION OF JOBS WITHIN A BARGAINING UNIT;
REPEALING AND REENACTING SECTION 10-7E-10 NMSA 1978 (BEING
LAWS 2003, CHAPTER 4, SECTION 10 AND LAWS 2003, CHAPTER 5,
SECTION 10); REPEALING SECTIONS 10-7E-11 AND 10-7E-26 NMSA
1978 (BEING LAWS 2003, CHAPTER 4, SECTION 11 AND LAWS 2003,
CHAPTER 5, SECTION 11; AND LAWS 2003, CHAPTER 4, SECTION 26
AND LAWS 2003, CHAPTER 5, SECTION 26).

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

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

"10-7E-3. CONFLICTS.--In the event of conflict with
other laws, the provisions of the Public Employee Bargaining
Act shall supersede other previously enacted legislation and
rules; provided that the Public Employee Bargaining Act shall

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1 not supersede the provisions of the Bateman Act, the
2 Personnel Act, the Group Benefits Act, the Per Diem and
3 Mileage Act, the Retiree Health Care Act, public employee
4 retirement laws or the Tort Claims Act."

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

8 "10-7E-4. DEFINITIONS.--As used in the Public Employee
9 Bargaining Act:

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

13 B. "appropriate governing body" means the
14 policymaking body or individual representing a public
15 employer as designated in Section 10-7E-7 NMSA 1978;

16 C. "authorization card" means a signed affirmation
17 by a member of an appropriate bargaining unit designating a
18 particular organization as exclusive representative;

19 D. "board" means the public employee labor
20 relations board;

21 E. "certification" means the designation by the
22 board or local board of a labor organization as the exclusive
23 representative for all public employees in an appropriate
24 bargaining unit;

25 F. "collective bargaining" means the act of

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1 negotiating between a public employer and an exclusive
2 representative for the purpose of entering into a written
3 agreement regarding wages, hours and other terms and
4 conditions of employment;

5 G. "confidential employee" means a person who
6 devotes a majority of the person's time to assisting and
7 acting in a confidential capacity with respect to a person
8 who formulates, determines and effectuates management
9 policies;

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

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

16 J. "impasse" means failure of a public employer
17 and an exclusive representative, after good-faith bargaining,
18 to reach agreement in the course of negotiating a collective
19 bargaining agreement;

20 K. "labor organization" means an employee
21 organization, one of whose purposes is the representation of
22 public employees in collective bargaining and in otherwise
23 meeting, consulting and conferring with employers on matters
24 pertaining to employment relations;

25 L. "local board" means a local labor relations

1 board established by a public employer, other than the state,
2 through ordinance, resolution or charter amendment, and which
3 continues to exist by virtue of the election described in
4 Subsection B of Section 10-7E-10 NMSA 1978;

5 M. "lockout" means an act by a public employer to
6 prevent its employees from going to work for the purpose of
7 resisting the demands of the employees' exclusive
8 representative or for the purpose of gaining a concession
9 from the exclusive representative;

10 N. "management employee" means an employee who is
11 engaged primarily in executive and management functions and
12 is charged with the responsibility of developing,
13 administering or effectuating management policies. An
14 employee shall not be deemed a management employee solely
15 because the employee participates in cooperative decision-
16 making programs or whose fiscal responsibilities are routine,
17 incidental or clerical;

18 O. "mediation" means assistance by an impartial
19 third party to resolve an impasse between a public employer
20 and an exclusive representative regarding employment
21 relations through interpretation, suggestion and advice;

22 P. "professional employee" means an employee whose
23 work is predominantly intellectual and varied in character
24 and whose work involves the consistent exercise of discretion
25 and judgment in its performance and requires knowledge of an

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

6 Q. "public employee" means a regular
7 nonprobationary employee of a public employer; provided that,
8 in the public schools, "public employee" shall also include a
9 regular probationary employee and includes those employees
10 whose work is funded in whole or in part by grants or other
11 third-party sources;

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

20 S. "strike" means a public employee's refusal, in
21 concerted action with other public employees, to report for
22 duty or the willful absence in whole or in part from the
23 full, faithful and proper performance of the duties of
24 employment for the purpose of inducing, influencing or
25 coercing a change in the conditions, compensation, rights,

1 privileges or obligations of public employment; and

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

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

17 "10-7E-5. RIGHTS OF PUBLIC EMPLOYEES.--

18 A. Public employees, other than management
19 employees and confidential employees, may form, join or
20 assist a labor organization for the purpose of collective
21 bargaining through representatives chosen by public employees
22 without interference, restraint or coercion and shall have
23 the right to refuse those activities.

24 B. Public employees have the right to engage in
25 other concerted activities for mutual aid or benefit. This

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1 right shall not be construed as modifying the prohibition on
2 strikes set forth in Section 10-7E-21 NMSA 1978."

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

6 "10-7E-9. BOARD AND LOCAL BOARD--POWERS AND DUTIES.--

7 A. The board or a local board shall promulgate
8 rules necessary to accomplish and perform its functions and
9 duties as established in the Public Employee Bargaining Act,
10 including the establishment of procedures for:

11 (1) the designation of appropriate
12 bargaining units;

13 (2) the selection, certification and
14 decertification of exclusive representatives; and

15 (3) the filing of, hearing on and
16 determination of complaints of prohibited practices.

17 B. The board or a local board shall:

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

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

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

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

11 D. The board or a local board shall decide issues
12 by majority vote and each shall issue its decisions in the
13 form of written orders and opinions.

14 E. The board or a local board may hire personnel
15 or contract with third parties as each deems necessary to
16 assist it in carrying out its functions and each may delegate
17 any or all of its authority to those third parties, subject
18 to final review of the board or local board.

19 F. The board or a local board each has the power
20 to enforce provisions of the Public Employee Bargaining Act
21 through the imposition of appropriate administrative
22 remedies, actual damages related to dues, back pay including
23 benefits, reinstatement with the same seniority status that
24 the employee would have had but for the violation,
25 declaratory or injunctive relief or provisional remedies,

1 including temporary restraining orders or preliminary
2 injunctions. No punitive damages or attorney fees may be
3 awarded by the board or local board.

4 G. Local board rules shall conform to the rules
5 adopted by the board and shall not be effective until
6 approved by an order of the board. On good cause shown, the
7 board may approve rules proposed by a local board, which
8 rules vary from rules of the board. All rules promulgated by
9 a local board shall comply with state law. A rule
10 promulgated by the board or a local board shall not require,
11 directly or indirectly, as a condition of continuous
12 employment, a public employee covered by the Public Employee
13 Bargaining Act to pay money to a labor organization that is
14 certified as an exclusive representative.

15 H. The board shall maintain current versions of
16 its rules and current versions of the rules of each local
17 board on a publicly accessible website. That website shall
18 also include a current listing of the members of the board
19 and the members of each local board. Each local board shall
20 notify the board, within thirty days of revisions of its
21 rules or changes in its membership, of any such revisions of
22 its rules or changes in its membership."

23 SECTION 5. Section 10-7E-10 NMSA 1978 (being Laws 2003,
24 Chapter 4, Section 10 and Laws 2003, Chapter 5, Section 10)
25 is repealed and a new Section 10-7E-10 NMSA 1978 is enacted

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1 to read:

2 "10-7E-10. LOCAL BOARDS--CONDITIONS OF CONTINUED
3 EXISTENCE--TRANSFER OF AUTHORITY UPON TERMINATION--
4 PROHIBITION OF NEW LOCAL BOARDS.--

5 A. All local boards shall continue to exist except
6 as provided in Subsections B through J of this section.

7 B. No later than December 31, 2020, each local
8 board shall submit to the board copies of a revised local
9 ordinance, resolution or charter amendment authorizing
10 continuation of the local board. A local board that fails to
11 meet the submission deadline set forth in this subsection
12 shall cease to exist on January 1, 2021. No later than
13 February 15, 2021, the board shall determine whether the
14 local ordinance, resolution or charter amendment authorizing
15 continuation of a local board provides the same or greater
16 rights to public employees and labor organizations as the
17 Public Employee Bargaining Act, allows for the determination
18 of, and remedies for, an action that would constitute a
19 prohibited practice under the Public Employee Bargaining Act
20 and contains impasse resolution procedures equivalent to
21 those set forth in Section 10-7E-18 NMSA 1978. If the board
22 determines that a local ordinance, resolution or charter
23 amendment authorizing continuation of a local board does not
24 satisfy the requirements of this subsection, defects may be
25 cured by June 30, 2021 or the local board will cease to

1 exist. The board shall certify by written order whether the
2 requirements of this subsection have been met.

3 C. No later than April 30, 2021, each local board
4 shall submit to the board copies of its rules. A local board
5 that fails to meet the submission deadline set forth in this
6 subsection shall cease to exist on July 1, 2021. No later
7 than May 30, 2021, the board shall determine whether the
8 rules of a local board conform to the rules of the board, or
9 for good cause shown, any variances meet the requirements of
10 the Public Employee Bargaining Act. If the board determines
11 that the rules of a local board do not meet the requirements
12 of this subsection, the local board may cure any defects by
13 June 30, 2021, or it will cease to exist. The board shall
14 certify by written order whether the requirements of this
15 subsection have been met by a local board.

16 D. A local board existing as of July 1, 2021 shall
17 continue to exist after December 31, 2021 only if it has
18 submitted to the board an affirmation that:

19 (1) the public employer subject to the local
20 board has affirmatively elected to continue to operate under
21 the local board; and

22 (2) each labor organization representing
23 employees of the public employer subject to the local board
24 has submitted a written notice to the board that it
25 affirmatively elects to continue to operate under the local

1 board.

2 E. The affirmation required pursuant to Subsection
3 D of this section shall be submitted to the board by each
4 local board between November 1 and December 31 of each odd-
5 numbered year. A local board that fails to timely submit the
6 affirmation required by this subsection shall cease to exist
7 as of January 1 of the next even-numbered year.

8 F. Beginning on July 1, 2020, if at any time
9 thereafter a local board has a membership vacancy exceeding
10 sixty days in length, the local board shall cease to exist.

11 G. A local board may cease to exist upon:

12 (1) a repeal of the local ordinance,
13 resolution or charter amendment authorizing continuation of
14 the local board; or

15 (2) a vote of a local board, which vote is
16 filed with the board.

17 H. Once a local board ceases to exist for any
18 reason, it may not be revived.

19 I. Whenever a local board ceases to exist, all
20 matters pending before such local board shall be transferred
21 to the board for resolution.

22 J. After June 30, 2020, no new local board may be
23 created."

24 SECTION 6. Section 10-7E-13 NMSA 1978 (being Laws 2003,
25 Chapter 4, Section 13 and Laws 2003, Chapter 5, Section 13)

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1 is amended to read:

2 "10-7E-13. APPROPRIATE BARGAINING UNITS.--

3 A. The board or local board shall, upon receipt of
4 a petition for a representation election filed by a labor
5 organization, designate the appropriate bargaining units for
6 collective bargaining. Appropriate bargaining units shall be
7 established on the basis of occupational groups or clear and
8 identifiable communities of interest in employment terms and
9 conditions and related personnel matters among the public
10 employees involved. Occupational groups shall generally be
11 identified as blue-collar, secretarial clerical, technical,
12 professional, paraprofessional, police, fire and corrections.
13 The parties, by mutual agreement, may further consolidate
14 occupational groups. Essential factors in determining
15 appropriate bargaining units shall include the principles of
16 efficient administration of government, the history of
17 collective bargaining and the assurance to public employees
18 of the fullest freedom in exercising the rights guaranteed by
19 the Public Employee Bargaining Act.

20 B. Within thirty days of a disagreement arising
21 between a public employer and a labor organization concerning
22 the composition of an appropriate bargaining unit, the board
23 or local board shall hold a hearing concerning the
24 composition of the bargaining unit before designating an
25 appropriate bargaining unit.

1 C. The board or local board shall not include in
2 an appropriate bargaining unit supervisors, managers or
3 confidential employees.

4 D. Jobs included within a bargaining unit pursuant
5 to a local ordinance in effect on January 1, 2020 shall
6 remain in that bargaining unit."

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

10 "10-7E-14. ELECTIONS.--

11 A. Whenever, in accordance with rules prescribed
12 by the board or local board, a petition is filed by a labor
13 organization containing the signatures of at least thirty
14 percent of the public employees in an appropriate bargaining
15 unit, the board or local board shall conduct a secret ballot
16 representation election to determine whether and by which
17 labor organization the public employees in the appropriate
18 bargaining unit shall be represented. Upon acceptance of a
19 valid petition, the board or a local board shall require the
20 public employer to provide the labor organization within ten
21 business days the names, job titles, work locations, home
22 addresses, personal email addresses and home or cellular
23 telephone numbers of any public employee in the proposed
24 bargaining unit. This information shall be kept confidential
25 by the labor organization and its employees or officers. The

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1 ballot shall contain the name of any labor organization
2 submitting a petition containing signatures of at least
3 thirty percent of the public employees in the appropriate
4 bargaining unit. The ballot shall also contain a provision
5 allowing public employees to indicate whether they do not
6 desire to be represented by a labor organization. An
7 election shall only be valid if forty percent of the eligible
8 employees in the bargaining unit vote in the election.

9 B. Once a labor organization has filed a valid
10 petition with the board or local board calling for a
11 representation election, other labor organizations may seek
12 to be placed on the ballot. Such an organization shall file
13 a petition containing the signatures of not less than thirty
14 percent of the public employees in the appropriate bargaining
15 unit no later than ten days after the board or the local
16 board and the public employer post a written notice that the
17 petition in Subsection A of this section has been filed by a
18 labor organization.

19 C. As an alternative to the provisions of
20 Subsection A of this section, a labor organization with a
21 reasonable basis for claiming to represent a majority of the
22 employees in an appropriate bargaining unit may submit
23 authorization cards from a majority of the employees in an
24 appropriate bargaining unit to the board or local board,
25 which shall, upon verification that a majority of the

1 employees in the appropriate bargaining unit have signed
2 valid authorization cards, certify the labor organization as
3 the exclusive representative of all public employees in the
4 appropriate bargaining unit. The employer may challenge the
5 verification of the board or local board; the board or local
6 board shall hold a fact-finding hearing on the challenge to
7 confirm that a majority of the employees in the appropriate
8 bargaining unit have signed valid authorization cards.

9 D. If a labor organization receives a majority of
10 votes cast, it shall be certified as the exclusive
11 representative of all public employees in the appropriate
12 bargaining unit. Within fifteen days of an election in which
13 no labor organization receives a majority of the votes cast,
14 a runoff election between the two choices receiving the
15 largest number of votes cast shall be conducted. The board
16 or local board shall certify the results of the election,
17 and, when a labor organization receives a majority of the
18 votes cast, the board or local board shall certify the labor
19 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
22 election or runoff election has been conducted in the twelve-
23 month period immediately preceding the proposed
24 representation election. An election shall not be held
25 during the term of an existing collective bargaining

1 agreement, except as provided in Section 10-7E-16 NMSA 1978."

2 SECTION 8. Section 10-7E-15 NMSA 1978 (being Laws 2003,
3 Chapter 4, Section 15 and Laws 2003, Chapter 5, Section 15)
4 is amended to read:

5 "10-7E-15. EXCLUSIVE REPRESENTATION.--

6 A. A labor organization that has been certified by
7 the board or local board as representing the public employees
8 in the appropriate bargaining unit shall be the exclusive
9 representative of all public employees in the appropriate
10 bargaining unit. The exclusive representative shall act for
11 all public employees in the appropriate bargaining unit and
12 negotiate a collective bargaining agreement covering all
13 public employees in the appropriate bargaining unit. The
14 exclusive representative shall represent the interests of all
15 public employees in the appropriate bargaining unit without
16 discrimination or regard to membership in the labor
17 organization. A claim by a public employee that the
18 exclusive representative has violated this duty of fair
19 representation shall be forever barred if not brought within
20 six months of the date on which the public employee knew, or
21 reasonably should have known, of the violation.

22 B. This section does not prevent a public
23 employee, acting individually, from presenting a grievance
24 without the intervention of the exclusive representative. At
25 a hearing on a grievance brought by a public employee

1 individually, the exclusive representative shall be afforded
2 the opportunity to be present and make its views known. An
3 adjustment made shall not be inconsistent with or in
4 violation of the collective bargaining agreement then in
5 effect between the public employer and the exclusive
6 representative.

7 C. A public employer shall provide an exclusive
8 representative of an appropriate bargaining unit reasonable
9 access to employees within the bargaining unit, including the
10 following:

11 (1) for purposes of newly hired employees in
12 the bargaining unit, reasonable access includes:

13 (a) the right to meet with new
14 employees, without loss of employee compensation or leave
15 benefits; and

16 (b) the right to meet with new
17 employees within thirty days from the date of hire for a
18 period of at least thirty minutes but not more than one
19 hundred twenty minutes, during new employee orientation or,
20 if the public employer does not conduct new employee
21 orientations, at individual or group meetings; and

22 (2) for purposes of employees in the
23 bargaining unit who are not new employees, reasonable access
24 includes:

25 (a) the right to meet with employees

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1 during the employees' regular work hours at the employees'
2 regular work location to investigate and discuss grievances,
3 workplace-related complaints and other matters relating to
4 employment relations; and

5 (b) the right to conduct meetings at
6 the employees' regular work location before or after the
7 employees' regular work hours, during meal periods and during
8 any other break periods.

9 D. A public employer shall permit an exclusive
10 representative to use the public employer's facilities or
11 property, whether owned or leased by the employer, for
12 purposes of conducting meetings with the represented
13 employees in the bargaining unit. An exclusive
14 representative may hold the meetings described in this
15 section at a time and place set by the exclusive
16 representative. The exclusive representative shall have the
17 right to conduct the meetings without undue interference and
18 may establish reasonable rules regarding appropriate conduct
19 for meeting attendees.

20 E. The meetings described in this section shall
21 not interfere with the public employer's operations.

22 F. If a public employer has the information in the
23 employer's records, the public employer shall provide to the
24 exclusive representative, in an editable digital file format
25 agreed to by the exclusive representative, the following

1 information for each employee in an appropriate bargaining
2 unit:

3 (1) the employee's name and date of hire;

4 (2) contact information, including:

5 (a) cellular, home and work telephone
6 numbers;

7 (b) a means of electronic
8 communication, including work and personal electronic mail
9 addresses; and

10 (c) home address or personal mailing
11 address; and

12 (3) employment information, including the
13 employee's job title, salary and work site location.

14 G. The public employer shall provide the
15 information described in Subsection F of this section to the
16 exclusive representative within ten days from the date of
17 hire for newly hired employees in an appropriate bargaining
18 unit, and every one hundred twenty days for employees in the
19 bargaining unit who are not newly hired employees. The
20 information shall be kept confidential by the labor
21 organization and its employees or officers. Apart from the
22 disclosure required by this subsection, and notwithstanding
23 any provision contained in the Inspection of Public Records
24 Act, the public employer shall not disclose the information
25 described in Subsection F of this section, or public

1 employees' dates of birth or social security numbers to a
2 third party.

3 H. An exclusive representative shall have the
4 right to use the electronic mail systems or other similar
5 communication systems of a public employer to communicate
6 with the employees in the bargaining unit regarding:

7 (1) collective bargaining, including the
8 administration of collective bargaining agreements;

9 (2) the investigation of grievances or other
10 disputes relating to employment relations; and

11 (3) matters involving the governance or
12 business of the labor organization.

13 I. Nothing in this section prevents a public
14 employer from providing an exclusive representative access to
15 employees within the bargaining unit beyond the reasonable
16 access required under this section, or limits any existing
17 right of a labor organization to communicate with public
18 employees."

19 SECTION 9. Section 10-7E-16 NMSA 1978 (being Laws 2003,
20 Chapter 4, Section 16 and Laws 2003, Chapter 5, Section 16)
21 is amended to read:

22 "10-7E-16. DECERTIFICATION OF EXCLUSIVE
23 REPRESENTATIVE.--

24 A. A member of a labor organization or the labor
25 organization itself may initiate decertification of a labor

1 organization as the exclusive representative if thirty
2 percent of the public employees in the appropriate bargaining
3 unit make a written request to the board or local board for a
4 decertification election. Decertification elections shall be
5 held in a manner prescribed by rule of the board. An
6 election shall only be valid if forty percent of the eligible
7 employees in the bargaining unit vote in the election.

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

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

22 D. When an exclusive representative has been
23 certified but no collective bargaining agreement is in
24 effect, the board or local board shall not accept a request
25 for a decertification election or an election sought by a

1 competing labor organization earlier than twelve months
2 subsequent to a labor organization's certification as the
3 exclusive representative."

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

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

8 A. Except for retirement programs provided
9 pursuant to the Public Employees Retirement Act or the
10 Educational Retirement Act, public employers and exclusive
11 representatives:

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

17 (2) shall enter into written collective
18 bargaining agreements covering employment relations.
19 Entering into a collective bargaining agreement shall not
20 obviate the duty to bargain in good faith during the term of
21 the collective bargaining agreement regarding changes to
22 wages, hours and all other terms and conditions of
23 employment, unless it can be demonstrated that the parties
24 clearly and unmistakably waived the right to bargain
25 regarding those subjects. However, no party may be required,

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1 by this provision, to renegotiate the existing terms of
2 collective bargaining agreements already in place.

3 B. In regard to the Public Employees Retirement
4 Act and the Educational Retirement Act, a public employer in
5 a written collective bargaining agreement may agree to assume
6 any portion of a public employee's contribution obligation to
7 retirement programs provided pursuant to the Public Employees
8 Retirement Act or the Educational Retirement Act. Such
9 agreements are subject to the limitations set forth in this
10 section.

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

25 D. Payroll deduction of the exclusive

1 representative's membership dues shall be a mandatory subject
2 of bargaining if either party chooses to negotiate the issue.
3 The amount of dues shall be certified in writing by an
4 official of the labor organization and shall not include
5 special assessments, penalties or fines of any type. The
6 public employer shall honor payroll deductions until the
7 authorization is revoked in writing by the public employee in
8 accordance with the negotiated agreement and this subsection
9 and for so long as the labor organization is certified as the
10 exclusive representative. Public employees who have
11 authorized the payroll deduction of dues to a labor
12 organization may revoke that authorization by providing
13 written notice to their labor organization during a window
14 period not to exceed ten days per year for each employee.
15 The public employer and the labor organization shall
16 negotiate when the commencement of that period will begin
17 annually for each employee. If no agreement is reached, the
18 period shall be during the ten days following the anniversary
19 date of each employee's employment. Within ten days of
20 receipt of notice from a public employee of revocation of
21 authorization for the payroll deduction of dues, the labor
22 organization shall provide notice to the public employer of a
23 public employee's revocation of that authorization. A public
24 employee's notice of revocation for the payroll deduction of
25 dues shall be effective on the thirtieth day after the notice

1 provided to the public employer by the labor organization.
2 No authorized payroll deduction of dues held by a public
3 employer or a labor organization on July 1, 2020 shall be
4 rendered invalid by this provision and shall remain valid
5 until replaced or revoked by the public employee. During the
6 time that a board certification is in effect for a particular
7 appropriate bargaining unit, the public employer shall not
8 deduct dues for any other labor organization.

9 E. Public employers and a labor organization, or
10 their employees or agents, are not liable for, and have a
11 complete defense to, any claims or actions under the law of
12 this state for requiring, deducting, receiving or retaining
13 fair share dues or fees from public employees, and current or
14 former public employees do not have standing to pursue these
15 claims or actions if the fair share dues or fees were
16 permitted at the time under the laws of this state then in
17 force and paid, through payroll deduction or otherwise, on or
18 before June 27, 2018. This subsection:

19 (1) applies to all claims and actions
20 pending on July 1, 2020 and to claims and actions filed on or
21 after July 1, 2020; and

22 (2) shall not be interpreted to infer that
23 any relief made unavailable by this section would otherwise
24 be available.

25 F. The scope of bargaining for the exclusive

1 representative and the state shall include enhancements of
2 employee rights and benefits existing pursuant to the
3 Personnel Act.

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

9 H. An impasse resolution or an agreement provision
10 by the state and an exclusive representative that requires
11 the expenditure of funds shall be contingent upon the
12 specific appropriation of funds by the legislature and the
13 availability of funds. An impasse resolution or an agreement
14 provision by a public employer other than the state or the
15 public schools and an exclusive representative that requires
16 the expenditure of funds shall be contingent upon the
17 specific appropriation of funds by the appropriate governing
18 body and the availability of funds. An agreement provision
19 by a local school board and an exclusive representative that
20 requires the expenditure of funds shall be contingent upon
21 ratification by the appropriate governing body. An
22 arbitration decision shall not require the reappropriation of
23 funds.

24 I. An agreement shall include a grievance
25 procedure to be used for the settlement of disputes

1 pertaining to employment terms and conditions and related
2 personnel matters. The grievance procedure shall provide for
3 a final and binding determination. The final determination
4 shall constitute an arbitration award within the meaning of
5 the Uniform Arbitration Act; such award shall be subject to
6 judicial review pursuant to the standard set forth in the
7 Uniform Arbitration Act. The costs of an arbitration
8 proceeding conducted pursuant to this subsection shall be
9 shared equally by the parties.

10 J. The following meetings shall be closed:

11 (1) meetings for the discussion of
12 bargaining strategy preliminary to collective bargaining
13 negotiations between the public employer and the exclusive
14 representative of the public employees of the public
15 employer;

16 (2) collective bargaining sessions; and

17 (3) consultations and impasse resolution
18 procedures at which the public employer and the exclusive
19 representative of the appropriate bargaining unit are
20 present."

21 SECTION 11. Section 10-7E-18 NMSA 1978 (being Laws
22 2003, Chapter 4, Section 18 and Laws 2003, Chapter 5, Section
23 18) is amended to read:

24 "10-7E-18. IMPASSE RESOLUTION.--

25 A. The following negotiations and impasse

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1 procedures shall be followed by the state and exclusive
2 representatives for state employees:

3 (1) a request to the state for the
4 commencement of initial negotiations shall be filed in
5 writing by the exclusive representative no later than June 1
6 of the year in which negotiations are to take place.

7 Negotiations shall begin no later than July 1 of that year;

8 (2) in subsequent years, negotiations agreed
9 to by the parties shall begin no later than August 1
10 following the submission of written notice to the state by
11 the exclusive representative no later than July 1 of the year
12 in which negotiations are to take place;

13 (3) if an impasse occurs during negotiations
14 between the parties, either party may request mediation
15 services from the board. A mediator from the federal
16 mediation and conciliation service shall be assigned by the
17 board to assist in negotiations unless the parties agree to
18 another mediator;

19 (4) the mediator shall provide services to
20 the parties until the parties reach agreement or the mediator
21 believes that mediation services are no longer helpful or
22 until thirty days after the mediator was requested, whichever
23 occurs first; and

24 (5) if the impasse continues after the time
25 described in Paragraph (4) of this subsection, either party

1 may request a list of seven arbitrators from the federal
2 mediation and conciliation service. One arbitrator shall be
3 chosen by the parties by alternately striking names from such
4 list. Who strikes first shall be determined by coin toss.
5 The arbitrator shall render a final, binding, written
6 decision resolving unresolved issues pursuant to Subsection H
7 of Section 10-7E-17 NMSA 1978 and the Uniform Arbitration Act
8 no later than thirty days after the arbitrator has been
9 notified of selection by the parties. The arbitrator's
10 decision shall be limited to a selection of one of the two
11 parties' complete, last, best offer. The costs of an
12 arbitrator and the arbitrator's related costs conducted
13 pursuant to this subsection shall be shared equally by the
14 parties. Each party shall be responsible for bearing the
15 cost of presenting its case. The decision shall be subject
16 to judicial review pursuant to the standard set forth in the
17 Uniform Arbitration Act.

18 B. The following impasse procedures shall be
19 followed by all public employers and exclusive
20 representatives, except the state and the state's exclusive
21 representatives:

22 (1) if an impasse occurs, either party may
23 request from the board or local board that a mediator be
24 assigned to the negotiations unless the parties can agree on
25 a mediator. A mediator with the federal mediation and

1 conciliation service shall be assigned by the board or local
2 board to assist negotiations unless the parties agree to
3 another mediator; and

4 (2) if the impasse continues after a thirty-
5 day mediation period, either party may request a list of
6 seven arbitrators from the federal mediation and conciliation
7 service. One arbitrator shall be chosen by the parties by
8 alternately striking names from such list. Who strikes first
9 shall be determined by coin toss. The arbitrator shall
10 render a final, binding, written decision resolving
11 unresolved issues pursuant to Subsection H of Section
12 10-7E-17 NMSA 1978 and the Uniform Arbitration Act no later
13 than thirty days after the arbitrator has been notified of
14 selection by the parties. The arbitrator's decision shall be
15 limited to a selection of one of the two parties' complete,
16 last, best offer. The costs of an arbitrator and the
17 arbitrator's related costs conducted pursuant to this
18 subsection shall be shared equally by the parties. Each
19 party shall be responsible for bearing the cost of presenting
20 its case. The decision shall be subject to judicial review
21 pursuant to the standard set forth in the Uniform Arbitration
22 Act.

23 C. A public employer other than the state may
24 enter into a written agreement with the exclusive
25 representative setting forth an alternative impasse

1 resolution procedure.

2 D. In the event that an impasse continues after
3 the expiration of a contract, the existing contract will
4 continue in full force and effect until it is replaced by a
5 subsequent written agreement. However, this shall not
6 require the public employer to increase any employees'
7 levels, steps or grades of compensation contained in the
8 existing contract."

9 SECTION 12. Section 10-7E-19 NMSA 1978 (being Laws
10 2003, Chapter 4, Section 19 and Laws 2003, Chapter 5, Section
11 19) is amended to read:

12 "10-7E-19. PUBLIC EMPLOYERS--PROHIBITED PRACTICES.--A
13 public employer or the public employer's representative shall
14 not:

15 A. discriminate against a public employee with
16 regard to terms and conditions of employment because of the
17 employee's membership in a labor organization;

18 B. interfere with, restrain or coerce a public
19 employee in the exercise of a right guaranteed pursuant to
20 the Public Employee Bargaining Act or use public funds to
21 influence the decision of its employees or the employees of
22 its subcontractors regarding whether to support or oppose a
23 labor organization that represents or seeks to represent
24 those employees, or whether to become a member of any labor
25 organization; provided, however, that this subsection does

1 not apply to activities performed or expenses incurred:

2 (1) addressing a grievance or negotiating or
3 administering a collective bargaining agreement;

4 (2) allowing a labor organization or its
5 representatives access to the public employer's facilities or
6 properties;

7 (3) performing an activity required by
8 federal or state law or by a collective bargaining agreement;

9 (4) negotiating, entering into or carrying
10 out an agreement with a labor organization;

11 (5) paying wages to a represented employee
12 while the employee is performing duties if the payment is
13 permitted under a collective bargaining agreement; or

14 (6) representing the public employer in a
15 proceeding before the board or a local board or in a judicial
16 review of that proceeding;

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

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

22 E. discharge or otherwise discriminate against a
23 public employee because the employee has signed or filed an
24 affidavit, petition, grievance or complaint or given
25 information or testimony pursuant to the provisions of the

1 Public Employee Bargaining Act or because a public employee
2 is forming, joining or choosing to be represented by a labor
3 organization;

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

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

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

10 SECTION 13. REPEAL.--Sections 10-7E-11 and 10-7E-26
11 NMSA 1978 (being Laws 2003, Chapter 4, Section 11 and Laws
12 2003, Chapter 5, Section 11; and Laws 2003, Chapter 4,
13 Section 26 and Laws 2003, Chapter 5, Section 26) are
14 repealed.

15 SECTION 14. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2020. _____

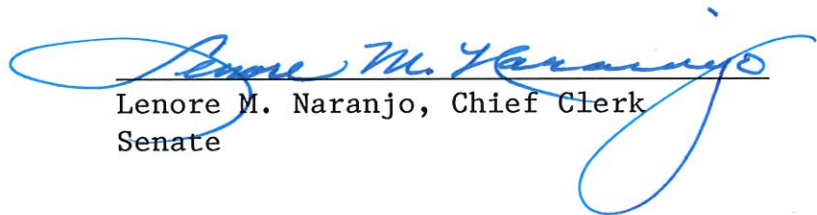
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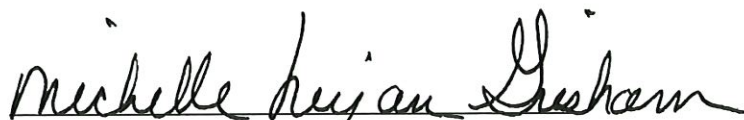
Brian Egolf, Speaker
House of Representatives


Lisa M. Ortiz McCutcheon, Chief Clerk
House of Representatives

Howie C. Morales, President
Senate


Lenore M. Naranjo, Chief Clerk
Senate

Approved by me this 5th day of March, 2020



Michelle Lujan Grisham, Governor
State of New Mexico