

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 13-0194.01 Kristen Forrestal x4217

SENATE BILL 13-025

SENATE SPONSORSHIP

Tochtrop,

HOUSE SPONSORSHIP

Williams,

Senate Committees
Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING COLLECTIVE BARGAINING BY FIREFIGHTERS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill grants firefighters the right to:

- ! Organize, form, join, or assist an employee organization or refrain from doing so;
- ! Negotiate collectively or express a grievance through representatives of their choice;
- ! Engage in other lawful concerted activity for the purpose of collective bargaining or other mutual aid or protection;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
3rd Reading Unamended
February 5, 2013

SENATE
Amended 2nd Reading
February 4, 2013

and

- ! Be represented by their exclusive representative without discrimination.

An employee organization recognized or elected for collective bargaining becomes the exclusive representative of all firefighters for collective bargaining. The bill prohibits a fire department from bargaining on matters covered by the act with any other employee or group. The bill grants the exclusive representative the right to be present and express its views at the adjustment of a complaint made by a member of the bargaining unit without the intervention of the exclusive representative. An exclusive representative may have dues and other moneys deducted from the pay of firefighters who authorize the deduction.

A fire department and an exclusive representative have to bargain collectively in good faith. Any agreements negotiated between an exclusive representative and a fire department, along with any terms approved by the voters of the political subdivision of the fire department, constitute the collective bargaining agreement between the parties. The bill requires the term of a collective bargaining agreement to be for between one and 3 years unless the parties agree to negotiate and reach a voluntary agreement on all terms of a new contract. The parties have to begin collective bargaining within a specified time after the notice. An impasse is deemed to exist if the parties fail to reach a collective bargaining agreement within a specified time after the beginning of collective bargaining. A collective bargaining agreement may require all members of the bargaining unit, as a condition of employment, to pay the exclusive representative's fees and expenses in negotiating and enforcing the agreement.

If an impasse exists, the bill requires the parties to allow an arbitration organization to appoint an advisory fact finder to hold a hearing on the unresolved issues and make recommendations on which party's final offer on each issue should be accepted. The bill specifies the factors that the advisory fact finder must consider. The parties have a specified time to consider the advisory fact-finder's recommendations and conduct further negotiations. If either party rejects the recommendations, the final offers of the parties on the unresolved issues will be submitted to the voters of the political subdivision of the public employer at a special election.

The bill prohibits firefighters from striking.

Existing bargaining units, exclusive representatives, and bargaining relationships as of the effective date of the bill remain in effect unless modified by agreement or election in accordance with the bill.

Firefighters may conduct secret-ballot elections to certify or decertify an employee organization as the exclusive representative of a bargaining unit.

The bill grants a firefighter or an employee organization the right

to sue to enforce the provisions of the bill.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 2 to article
3 5 of title 29 as follows:

4 PART 2

5 COLLECTIVE BARGAINING

6 **29-5-201. Short title.** THIS PART 2 SHALL BE KNOWN AND MAY BE
7 CITED AS THE "FIREFIGHTER COLLECTIVE BARGAINING ACT".

8 **29-5-202. Legislative declaration.** (1) THE GENERAL ASSEMBLY
9 HEREBY FINDS AND DECLARES THAT:

10 (a) THE PEOPLE OF COLORADO HAVE A FUNDAMENTAL INTEREST
11 IN THE DEVELOPMENT OF HARMONIOUS AND COOPERATIVE RELATIONSHIPS
12 BETWEEN PUBLIC EMPLOYERS AND FIREFIGHTERS;

13 (b) THE STATE HAS AN OBLIGATION TO PROTECT THE PUBLIC
14 SAFETY BY ASSURING, AT ALL TIMES, THE ORDERLY AND UNINTERRUPTED
15 OPERATION OF FIRE PROTECTION AGENCIES;

16 (c) THE DENIAL BY SOME PUBLIC EMPLOYERS OF THE RIGHT OF
17 FIREFIGHTERS TO ORGANIZE AND BARGAIN COLLECTIVELY LEADS TO
18 VARIOUS FORMS OF STRIFE AND UNREST, WHICH OBSTRUCT PUBLIC SAFETY;

19 (d) UNRESOLVED DISPUTES BETWEEN FIREFIGHTERS AND THEIR
20 PUBLIC EMPLOYERS HARM THE PUBLIC, THE GOVERNMENTAL AGENCIES,
21 AND THE EMPLOYEES INVOLVED;

22 (e) EXPERIENCE HAS PROVEN THAT LEGAL PROTECTION OF THE
23 RIGHT OF FIREFIGHTERS TO ORGANIZE SAFEGUARDS THE PUBLIC SAFETY BY
24 REMOVING CERTAIN RECOGNIZED SOURCES OF STRIFE AND UNREST AND
25 ENCOURAGING PRACTICES FUNDAMENTAL TO THE AMICABLE RESOLUTION

1 OF DISPUTES OVER COMPENSATION, HOURS, AND TERMS AND CONDITIONS
2 OF EMPLOYMENT AND BY CREATING EQUALITY OF BARGAINING POWER
3 BETWEEN PUBLIC EMPLOYERS AND FIREFIGHTERS THAT THEY EMPLOY;

4 (f) THE COLORADO WILDFIRES OF 2012 DEMONSTRATE THE LOSS
5 OF LIFE AND PROPERTY DAMAGE ASSOCIATED WITH NATURAL DISASTERS.
6 RESPONDING TO NATURAL DISASTERS REQUIRES A COORDINATED
7 RESPONSE BY, AND THE SIGNIFICANT CONTRIBUTION OF STAFFING AND
8 RESOURCES FROM, FIRE DEPARTMENTS ALL AROUND THE STATE. THE
9 DEPARTMENTS ARE REQUIRED TO WORK CLOSELY WITH ONE ANOTHER
10 DURING THESE TIMES, WHICH DEMONSTRATES THE STATEWIDE NATURE OF
11 FIRE PROTECTION AND NATURAL DISASTER RESPONSE. MOST
12 DEPARTMENTS HAVE AUTOMATIC MUTUAL AID AGREEMENTS WITH
13 ADJACENT DEPARTMENTS THAT BLUR JURISDICTIONAL LINES EVEN
14 FURTHER. THE ABILITY TO COORDINATE AND COOPERATE IS CRITICAL TO
15 EFFECTIVE FIRE PROTECTION AND DISASTER RESPONSE IN THE STATE.

16 (g) IT IS THE POLICY OF THIS STATE TO ELIMINATE THE CAUSES OF
17 CERTAIN SUBSTANTIAL OBSTRUCTIONS TO PUBLIC SAFETY AND TO
18 MITIGATE AND ELIMINATE THESE OBSTRUCTIONS WHEN THEY OCCUR BY:

19 (I) PROTECTING THE EXERCISE BY FIREFIGHTERS OF FULL FREEDOM
20 OF ASSOCIATION, SELF-ORGANIZATION, AND OTHER MUTUAL AID OR
21 PROTECTION;

22 (II) ENCOURAGING AND PROMOTING THE PRACTICE AND
23 PROCEDURE OF COLLECTIVE BARGAINING;

24 (III) PROTECTING THE RIGHT OF FIREFIGHTERS TO DESIGNATE
25 REPRESENTATIVES OF THEIR OWN CHOOSING FOR THE PURPOSE OF
26 COLLECTIVE BARGAINING; AND

27 (IV) OBLIGATING PUBLIC EMPLOYERS AND EMPLOYEE

1 ORGANIZATIONS OF FIREFIGHTERS THAT ARE CERTIFIED OR RECOGNIZED AS
2 REPRESENTING THEIR FIREFIGHTERS TO ENTER INTO COLLECTIVE
3 BARGAINING WITH THE WILLINGNESS TO RESOLVE DISPUTES RELATING TO
4 COMPENSATION, HOURS, AND THE TERMS AND CONDITIONS OF
5 EMPLOYMENT AND TO REDUCE TO WRITING ANY AGREEMENTS REACHED
6 THROUGH NEGOTIATIONS;

7 (h) COLLECTIVE BARGAINING FOR FIREFIGHTERS IS A MATTER OF
8 STATEWIDE CONCERN THAT AFFECTS THE PUBLIC SAFETY AND GENERAL
9 WELFARE, AS THE COLORADO SUPREME COURT HELD IN *CITY OF AURORA*
10 *V. AURORA FIREFIGHTERS' PROTECTIVE ASSOCIATION*, 193 COLO. 437, 566
11 P.2d 1356 (1977). THE CITIZENS OF COLORADO HAVE THE RIGHT TO
12 EXPECT A CONSISTENTLY HIGH LEVEL OF PUBLIC SAFETY THROUGHOUT
13 THE STATE, WHICH WILL ALLOW THE ECONOMY OF COLORADO TO GROW
14 AND PROSPER.

15 **29-5-203. Definitions.** AS USED IN THIS PART 2, UNLESS THE
16 CONTEXT OTHERWISE REQUIRES:

17 (1) "ADVISORY FACT FINDER" MEANS THE PERSON AGREED UPON
18 BY THE PARTIES OR APPOINTED BY THE AMERICAN ARBITRATION
19 ASSOCIATION, ITS SUCCESSOR ORGANIZATION, OR A SIMILAR
20 ORGANIZATION AGREED UPON BY BOTH PARTIES IN ACCORDANCE WITH
21 SECTION 29-5-208.

22 (2) "BARGAINING UNIT" MEANS ALL FIREFIGHTERS EMPLOYED BY
23 THE SAME PUBLIC EMPLOYER, EXCLUDING SUPERVISORS.

24 (3) "COLLECTIVE BARGAINING" MEANS THE PERFORMANCE OF THE
25 MUTUAL OBLIGATION OF A PUBLIC EMPLOYER, THROUGH ITS DESIGNATED
26 REPRESENTATIVES, AND AN EXCLUSIVE REPRESENTATIVE TO MEET AT
27 REASONABLE TIMES AND PLACES AND NEGOTIATE IN GOOD FAITH WITH

1 RESPECT TO COMPENSATION, HOURS, AND TERMS AND CONDITIONS OF
2 EMPLOYMENT, TO MEET AND NEGOTIATE IN GOOD FAITH ANY QUESTION
3 ARISING UNDER A COLLECTIVE BARGAINING AGREEMENT, AND TO EXECUTE
4 A WRITTEN CONTRACT INCORPORATING ANY AGREEMENTS REACHED.

5 (4) "COLLECTIVE BARGAINING AGREEMENT" MEANS AN
6 AGREEMENT NEGOTIATED BETWEEN AN EXCLUSIVE REPRESENTATIVE AND
7 A PUBLIC EMPLOYER, INCLUDING ONE ACCEPTED BY THE PARTIES AFTER
8 FACT-FINDING, IN ADDITION TO ANY TERMS APPROVED BY THE QUALIFIED
9 ELECTORS OF A PUBLIC EMPLOYER PURSUANT TO SECTION 29-5-208.

10 (5) "COMPENSATION" INCLUDES BASE WAGE OR SALARY; ANY
11 FORM OF DIRECT MONETARY PAYMENTS; HEALTH, ACCIDENT, LIFE, AND
12 DISABILITY INSURANCE PROGRAMS; PENSION PROGRAMS, INCLUDING THE
13 AMOUNT OF PENSION AND CONTRIBUTIONS TO THE EXTENT NOT
14 CONTROLLED BY LAW; PAID TIME OFF; UNIFORM AND EQUIPMENT
15 ALLOWANCES; EXPENSE REIMBURSEMENT; AND ALL ELIGIBILITY
16 CONDITIONS FOR COMPENSATION.

17 (6) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OF LABOR
18 IN THE DEPARTMENT OF LABOR AND EMPLOYMENT.

19 (7) (a) "EMPLOYEE ORGANIZATION" MEANS AN ORGANIZATION
20 THAT ADMITS FIREFIGHTERS EMPLOYED BY A PUBLIC EMPLOYER TO
21 MEMBERSHIP AND REPRESENTS FIREFIGHTERS IN COLLECTIVE BARGAINING.

22 (b) "EMPLOYEE ORGANIZATION" INCLUDES A PERSON ACTING AS
23 AN OFFICER, REPRESENTATIVE, OR AGENT OF AN EMPLOYEE
24 ORGANIZATION.

25 (8) "EXCLUSIVE REPRESENTATIVE" MEANS THE EMPLOYEE
26 ORGANIZATION RECOGNIZED BY THE PUBLIC EMPLOYER OR ELECTED BY A
27 MAJORITY OF FIREFIGHTERS IN A BARGAINING UNIT PURSUANT TO SECTION

1 29-5-211.

2 (9) "FINAL OFFER" MEANS THE LATEST WRITTEN OFFER MADE BY
3 AN EXCLUSIVE REPRESENTATIVE TO A PUBLIC EMPLOYER AND BY A PUBLIC
4 EMPLOYER TO AN EXCLUSIVE REPRESENTATIVE AT LEAST SEVEN DAYS
5 PRIOR TO THE BEGINNING OF AN IMPASSE RESOLUTION HEARING AS
6 DESCRIBED IN SECTION 29-5-208.

7 (10) "FIREFIGHTER" MEANS AN EMPLOYEE OF A PUBLIC EMPLOYER
8 WHOSE DUTIES ARE DIRECTLY INVOLVED WITH THE PROVISION OF FIRE
9 PROTECTION SERVICES. "FIREFIGHTER" DOES NOT INCLUDE CLERICAL
10 PERSONNEL OR VOLUNTEER FIREFIGHTERS, AS DEFINED IN SECTION
11 31-30-1102, C.R.S.

12 (11) "PARTY" MEANS AN EXCLUSIVE REPRESENTATIVE OR A PUBLIC
13 EMPLOYER.

14 (12) "PUBLIC EMPLOYER" MEANS A MUNICIPALITY, INCLUDING A
15 HOME RULE MUNICIPALITY, SPECIAL DISTRICT, FIRE AUTHORITY, OR
16 COUNTY IMPROVEMENT DISTRICT, THAT OFFERS FIRE PROTECTION SERVICE
17 AND EMPLOYS TWO OR MORE FIREFIGHTERS.

18 (13) "STRIKE" MEANS THE FOLLOWING CONCERTED ACTIONS
19 TAKEN BY MEMBERS OF A BARGAINING UNIT FOR THE PURPOSE OF
20 INDUCING, INFLUENCING, OR COERCING A CHANGE IN THE TERMS AND
21 CONDITIONS OF EMPLOYMENT, COMPENSATION, RIGHTS, PRIVILEGES, OR
22 OBLIGATIONS OF EMPLOYMENT:

23 (a) FAILURE TO REPORT FOR DUTY;

24 (b) WILLFUL ABSENCE FROM A POSITION;

25 (c) STOPPING OR DELIBERATELY SLOWING WORK;

26 (d) WITHHOLDING, IN WHOLE OR IN PART, THE FULL, FAITHFUL,
27 AND PROPER PERFORMANCE OF DUTIES OF EMPLOYMENT; OR

1 (e) INTERRUPTING THE OPERATIONS OF THE PUBLIC EMPLOYER.

2 (14) "SUPERVISOR" MEANS THE CHIEF AND ALL OFFICERS IN THE
3 RANK OR POSITION IMMEDIATELY BELOW THE CHIEF WHO REPORT
4 DIRECTLY TO THE CHIEF. NO OTHER FIREFIGHTER IS INCLUDED IN THE
5 DEFINITION OF SUPERVISOR FOR PURPOSES OF THIS PART 2.

6 (15) "TERMS AND CONDITIONS OF EMPLOYMENT" MEANS ALL
7 MATTERS AFFECTING THE EMPLOYMENT OF FIREFIGHTERS EXCEPT THE
8 BUDGET AND ORGANIZATIONAL STRUCTURE OF THE PUBLIC EMPLOYER.

9 **29-5-204. Rights of firefighters.** (1) FIREFIGHTERS HAVE THE
10 RIGHT TO:

11 (a) ORGANIZE, FORM, JOIN, OR ASSIST AN EMPLOYEE
12 ORGANIZATION, OR TO REFRAIN THEREFROM;

13 (b) NEGOTIATE COLLECTIVELY OR ADDRESS GRIEVANCES THROUGH
14 REPRESENTATIVES OF THEIR OWN CHOOSING;

15 (c) ENGAGE IN OTHER CONCERTED ACTIVITY FOR THE PURPOSE OF
16 COLLECTIVE BARGAINING OR OTHER MUTUAL AID OR PROTECTION, IF AND
17 TO THE EXTENT THAT THE ACTIVITY IS NOT PROHIBITED BY THIS PART 2 OR
18 ANY OTHER LAW OF THE STATE; AND

19 (d) BE REPRESENTED BY THEIR EXCLUSIVE REPRESENTATIVE, IF
20 ANY, WITHOUT DISCRIMINATION.

21 (2) NOTHING IN THIS PART 2 LIMITS THE RIGHT OF A SUPERVISOR
22 TO BE A MEMBER OF AN EMPLOYEE ORGANIZATION.

23 (3) NOTHING IN THIS PART 2 APPLIES TO VOLUNTEER FIREFIGHTERS.

24 **29-5-205. Employee organization as exclusive representative.**

25 (1) THE EMPLOYEE ORGANIZATION RECOGNIZED OR ELECTED FOR THE
26 PURPOSE OF COLLECTIVE BARGAINING BECOMES THE EXCLUSIVE
27 REPRESENTATIVE OF ALL THE FIREFIGHTERS IN THE BARGAINING UNIT FOR

1 THE PURPOSE OF COLLECTIVE BARGAINING. THE EXCLUSIVE
2 REPRESENTATIVE SHALL REPRESENT ALL FIREFIGHTERS IN THE
3 BARGAINING UNIT WITHOUT DISCRIMINATION. IF AN EXCLUSIVE
4 REPRESENTATIVE EXISTS IN A BARGAINING UNIT, A PUBLIC EMPLOYER
5 SHALL NOT BARGAIN IN REGARD TO MATTERS COVERED BY THIS PART 2
6 WITH ANY EMPLOYEE, GROUP OF EMPLOYEES IN THE BARGAINING UNIT, OR
7 OTHER EMPLOYEE ORGANIZATION.

8 (2) NOTHING IN THIS SECTION PREVENTS FIREFIGHTERS,
9 INDIVIDUALLY OR AS A GROUP, FROM PRESENTING COMPLAINTS TO A
10 PUBLIC EMPLOYER AND FROM HAVING COMPLAINTS ADJUSTED WITHOUT
11 THE INTERVENTION OF THE EXCLUSIVE REPRESENTATIVE FOR THE
12 BARGAINING UNIT OF WHICH THEY ARE A PART, IF THE EXCLUSIVE
13 REPRESENTATIVE IS GIVEN AN OPPORTUNITY TO BE PRESENT AT THE
14 ADJUSTMENT AND TO EXPRESS ITS VIEWS, AND IF THE ADJUSTMENT IS NOT
15 INCONSISTENT WITH THE TERMS OF A COLLECTIVE BARGAINING
16 AGREEMENT THEN IN EFFECT BETWEEN THE PUBLIC EMPLOYER AND THE
17 EXCLUSIVE REPRESENTATIVE. THE ABILITY TO ADJUST COMPLAINTS
18 DESCRIBED IN THIS SUBSECTION (2) DOES NOT INCLUDE THE USE OF ANY
19 PROCESS IN A COLLECTIVE BARGAINING AGREEMENT TO RESOLVE
20 GRIEVANCES OVER THE APPLICATION AND INTERPRETATION OF THE
21 AGREEMENT BEFORE A NEUTRAL THIRD PARTY.

22 (3) AN EMPLOYEE ORGANIZATION THAT HAS BEEN RECOGNIZED OR
23 ELECTED AS AN EXCLUSIVE REPRESENTATIVE HAS THE RIGHT TO HAVE ITS
24 DUES, INITIATION FEES, ASSESSMENTS, OR OTHER MONEYS DEDUCTED AND
25 COLLECTED BY THE PUBLIC EMPLOYER FROM THE PAY OF THOSE
26 FIREFIGHTERS WITHIN THE BARGAINING UNIT WHO AUTHORIZE, IN WRITING,
27 THE DEDUCTION OF THE MONEYS. THE AUTHORIZATION IS REVOCABLE AT

1 THE FIREFIGHTER'S WRITTEN REQUEST. THE DEDUCTIONS COMMENCE UPON
2 THE EXCLUSIVE REPRESENTATIVE'S WRITTEN REQUEST TO THE PUBLIC
3 EMPLOYER. THE RIGHT TO DEDUCTION IS IN FORCE AS LONG AS THE
4 EMPLOYEE ORGANIZATION REMAINS THE EXCLUSIVE BARGAINING
5 REPRESENTATIVE FOR THE EMPLOYEES IN THE BARGAINING UNIT.

6 **29-5-206. Obligation to negotiate in good faith.** THE PUBLIC
7 EMPLOYER AND THE EXCLUSIVE REPRESENTATIVE, THROUGH APPROPRIATE
8 OFFICIALS OR THEIR REPRESENTATIVES, HAVE THE AUTHORITY AND THE
9 DUTY TO BARGAIN COLLECTIVELY IN GOOD FAITH. THE OBLIGATION TO
10 BARGAIN IN GOOD FAITH DOES NOT COMPEL EITHER PARTY TO AGREE TO
11 A PROPOSAL OR MAKE A CONCESSION.

12 **29-5-207. Collective bargaining agreement.** (1) A COLLECTIVE
13 BARGAINING AGREEMENT ENTERED INTO PURSUANT TO THIS PART 2 IS FOR
14 A TERM OF AT LEAST ONE YEAR AND NO MORE THAN THREE YEARS,
15 BEGINNING JANUARY 1 AND ENDING DECEMBER 31, UNLESS A DIFFERENT
16 BEGINNING DATE IS AGREED TO BY THE PARTIES, RECOMMENDED BY THE
17 ADVISORY FACT FINDER, AND ACCEPTED BY THE PARTIES; OR SET AS A
18 RESULT OF A SPECIAL ELECTION.

19 (2) COLLECTIVE BARGAINING IS REQUIRED TO TAKE PLACE IF A
20 PARTY REQUESTS COLLECTIVE BARGAINING BY SENDING NOTICE TO THAT
21 EFFECT TO THE OTHER PARTY NO LATER THAN JULY 15 OF THE LAST YEAR
22 OF THE EXISTING COLLECTIVE BARGAINING AGREEMENT OR, IN THE CASE
23 OF A NEWLY CERTIFIED OR RECOGNIZED EXCLUSIVE REPRESENTATIVE, BY
24 JULY 15 OF THE YEAR IN WHICH BARGAINING WILL TAKE PLACE. IF NO
25 PARTY REQUESTS BARGAINING UNDER THIS SECTION BY JULY 15 OF THE
26 LAST YEAR OF AN EXISTING COLLECTIVE BARGAINING AGREEMENT, THE
27 AGREEMENT WILL CONTINUE FOR THE NEXT CALENDAR YEAR UNLESS THE

1 PARTIES AGREE TO NEGOTIATE AND REACH A VOLUNTARY AGREEMENT ON
2 ALL TERMS OF A NEW CONTRACT.

3 (3) THE PUBLIC EMPLOYER AND THE EXCLUSIVE REPRESENTATIVE
4 SHALL BEGIN COLLECTIVE BARGAINING FOR THE PURPOSE OF CREATING A
5 NEW COLLECTIVE BARGAINING AGREEMENT NO LATER THAN AUGUST 25
6 AFTER NOTICE TO BEGIN COLLECTIVE BARGAINING IS GIVEN PURSUANT TO
7 SUBSECTION (2) OF THIS SECTION.

8 (4) A COLLECTIVE BARGAINING AGREEMENT MAY CONTAIN
9 PROVISIONS REQUIRING ALL MEMBERS OF THE BARGAINING UNIT, AS A
10 CONDITION OF EMPLOYMENT, TO PAY NECESSARY FEES AND EXPENSES
11 GERMANE TO COLLECTIVE BARGAINING AND ENFORCEMENT OF A
12 COLLECTIVE BARGAINING AGREEMENT THAT ARE INCURRED BY THE
13 EXCLUSIVE REPRESENTATIVE.

14 **29-5-208. Impasse resolution.** (1) ANY TIME AFTER THIRTY DAYS
15 FROM THE START OF THE BARGAINING PROCESS, EITHER PARTY MAY
16 DECLARE AN IMPASSE IN NEGOTIATIONS. IF AN IMPASSE IS DECLARED,
17 AN ADVISORY FACT FINDER SHALL BE APPOINTED IN THE MANNER
18 DESCRIBED IN SUBSECTION (2) OF THIS SECTION.

19 (2) (a) WITHIN THREE DAYS AFTER AN IMPASSE IS DECLARED, THE
20 EXCLUSIVE REPRESENTATIVE OR THE PUBLIC EMPLOYER SHALL NOTIFY THE
21 AMERICAN ARBITRATION ASSOCIATION, A SUCCESSOR ORGANIZATION, OR
22 A SIMILAR ORGANIZATION AGREED UPON BY BOTH PARTIES, REFERRED TO
23 IN THIS SECTION AS THE "ARBITRATION ORGANIZATION", AND REQUEST THE
24 ARBITRATION ORGANIZATION TO SUBMIT SIMULTANEOUSLY TO EACH
25 PARTY WITHIN FOURTEEN DAYS AN IDENTICAL LIST OF SEVEN PERSONS
26 QUALIFIED TO SERVE AS AN ADVISORY FACT FINDER. THE PARTIES MAY
27 AGREE UPON AN ADVISORY FACT FINDER THAT IS NOT ON THE LIST

1 REQUESTED.

2 (b) WITHIN TEN DAYS AFTER THE ARBITRATION ORGANIZATION
3 DELIVERS THE LIST TO THE PARTIES PURSUANT TO PARAGRAPH (a) OF THIS
4 SUBSECTION (2), EACH PARTY MAY STRIKE TWO NAMES FROM THE LIST,
5 RANK THE REMAINING NAMES IN ORDER OF PREFERENCE, AND RETURN THE
6 LIST TO THE ARBITRATION ORGANIZATION. IF A PARTY DOES NOT RETURN
7 THE LIST WITHIN THE SPECIFIED TIME, ALL PERSONS NAMED IN THE LIST
8 ARE DEEMED ACCEPTABLE TO THAT PARTY.

9 (c) WITHIN TEN DAYS AFTER THE LAST LIST IS RETURNED TO THE
10 ARBITRATION ORGANIZATION PURSUANT TO PARAGRAPH (b) OF THIS
11 SUBSECTION (2), OR WITHIN TEN DAYS AFTER THE TIME THE LIST MUST BE
12 RETURNED BY THE PARTIES, WHICHEVER IS EARLIER, THE ARBITRATION
13 ORGANIZATION SHALL APPOINT ONE ADVISORY FACT FINDER FROM THE
14 PERSONS WHO HAVE BEEN APPROVED ON BOTH LISTS AND SHALL NOTIFY
15 THE PARTIES OF THE APPOINTMENT.

16 (3) THE ADVISORY FACT FINDER SHALL HOLD A HEARING ON THE
17 UNRESOLVED ISSUES BETWEEN THE PARTIES WITHIN THIRTY DAYS AFTER
18 THE APPOINTMENT OF THE ADVISORY FACT FINDER. THE ADVISORY FACT
19 FINDER SHALL GIVE WRITTEN NOTICE OF THE TIME AND PLACE OF THE
20 HEARING TO THE PARTIES NO LATER THAN TEN DAYS BEFORE THE
21 HEARING. THE HEARING MUST BE INFORMAL, AND THE RULES OF EVIDENCE
22 PREVAILING IN JUDICIAL PROCEEDINGS ARE NOT BINDING. THE ADVISORY
23 FACT FINDER MAY RECEIVE INTO EVIDENCE ANY DOCUMENTARY EVIDENCE
24 AND OTHER INFORMATION DEEMED RELEVANT BY THE ADVISORY FACT
25 FINDER. THE ADVISORY FACT FINDER MAY ADMINISTER OATHS AND
26 REQUIRE BY SUBPOENA THE ATTENDANCE AND TESTIMONY OF WITNESSES
27 AND THE PRODUCTION OF BOOKS, RECORDS, AND OTHER EVIDENCE

1 RELEVANT TO THE ISSUES PRESENTED FOR DETERMINATION. IF A PERSON
2 REFUSES TO OBEY A SUBPOENA, TAKE AN OATH, OR TESTIFY, OR IF ANY
3 WITNESS, PARTY, OR ATTORNEY IS GUILTY OF CONTEMPT WHILE IN
4 ATTENDANCE AT A HEARING, THE ADVISORY FACT FINDER MAY, OR THE
5 ATTORNEY GENERAL SHALL, IF REQUESTED, INVOKE THE AID OF THE
6 DISTRICT COURT OF THE COUNTY IN WHICH THE HEARING IS BEING HELD,
7 AND THE COURT SHALL ISSUE AN APPROPRIATE ORDER. THE COURT MAY
8 PUNISH A FAILURE TO OBEY THE ORDER AS CONTEMPT.

9 (4) THE HEARING CONDUCTED BY THE ADVISORY FACT FINDER
10 MUST BE CONCLUDED WITHIN TEN DAYS AFTER THE HEARING BEGINS.
11 WITH NOTICE TO THE ADVISORY FACT FINDER AT THE CONCLUSION OF THE
12 HEARING, A PARTY MAY SUBMIT A WRITTEN BRIEF TO THE ADVISORY FACT
13 FINDER WITHIN TEN DAYS AFTER THE CONCLUSION OF THE HEARING.

14 (5) WITHIN THIRTY DAYS AFTER RECEIPT OF THE LAST WRITTEN
15 BRIEF FROM A PARTY, OR WITHIN THIRTY DAYS AFTER THE CONCLUSION OF
16 THE HEARING IF NEITHER PARTY NOTIFIED THE ADVISORY FACT FINDER OF
17 ITS INTENT TO FILE A WRITTEN BRIEF, THE ADVISORY FACT FINDER SHALL
18 RENDER A DECISION RECOMMENDING A PEACEFUL AND JUST SETTLEMENT
19 OF THE UNRESOLVED ISSUES BETWEEN THE EXCLUSIVE REPRESENTATIVE
20 AND THE PUBLIC EMPLOYER. THE DECISION IS LIMITED TO A
21 RECOMMENDATION OF WHICH PORTION OF THE FINAL OFFERS MADE BY
22 EACH PARTY ON EACH ISSUE IN DISPUTE SHOULD BE ACCEPTED. THE
23 DECISION MUST INCLUDE WRITTEN FINDINGS AND A WRITTEN OPINION ON
24 THE ISSUES PRESENTED. THE ADVISORY FACT FINDER SHALL MAIL OR
25 OTHERWISE DELIVER A COPY OF THE WRITTEN DECISION TO THE EXCLUSIVE
26 REPRESENTATIVE AND THE PUBLIC EMPLOYER.

27 (6) IN ARRIVING AT A DECISION, THE ADVISORY FACT FINDER

1 SHALL CONSIDER:

2 (a) THE INTERESTS AND WELFARE OF THE PUBLIC;

3 (b) THE COMPENSATION, HOURS, AND TERMS AND CONDITIONS OF
4 EMPLOYMENT OF THE FIREFIGHTERS INVOLVED IN THE COLLECTIVE
5 BARGAINING IN COMPARISON WITH THE COMPENSATION, HOURS, AND
6 TERMS AND CONDITIONS OF EMPLOYMENT OF OTHER FIREFIGHTERS IN
7 COMPARABLE COMMUNITIES AS DETERMINED BY THE ADVISORY FACT
8 FINDER;

9 (c) STIPULATIONS OF THE PARTIES;

10 (d) THE LAWFUL AUTHORITY OF THE PUBLIC EMPLOYER;

11 (e) THE FINANCIAL ABILITY OF THE PUBLIC EMPLOYER TO MEET
12 THE COSTS OF ANY PROPOSED SETTLEMENT;

13 (f) CHANGES IN THE COST OF LIVING; AND

14 (g) OTHER FACTORS THAT ARE NORMALLY OR TRADITIONALLY
15 TAKEN INTO CONSIDERATION IN THE DETERMINATION OF COMPENSATION,
16 HOURS, AND TERMS AND CONDITIONS OF EMPLOYMENT THROUGH
17 VOLUNTARY COLLECTIVE BARGAINING, INTEREST ARBITRATION, OR
18 OTHERWISE BETWEEN PARTIES IN PUBLIC SERVICE OR IN PRIVATE
19 EMPLOYMENT.

20 (7) THE ADVISORY FACT FINDER SHALL GIVE DUE WEIGHT TO EACH
21 FACTOR LISTED IN SUBSECTION (6) OF THIS SECTION. IF THE ADVISORY
22 FACT FINDER DETERMINES THAT A FACTOR LISTED IN SUBSECTION (6) OF
23 THIS SECTION IS NOT RELEVANT, THE ADVISORY FACT FINDER SHALL STATE
24 IN THE FINDINGS THE SPECIFIC REASON WHY THE FACTOR IS NOT RELEVANT
25 TO THE ADVISORY FACT-FINDER'S DETERMINATION.

26 (8) THE EXCLUSIVE REPRESENTATIVE AND THE PUBLIC EMPLOYER
27 SHALL EQUALLY BEAR THE COST OF THE ADVISORY FACT FINDER AND

1 RELATED HEARINGS.

2 (9) (a) THE PUBLIC EMPLOYER AND THE EXCLUSIVE
3 REPRESENTATIVE HAVE FOURTEEN DAYS AFTER THE ISSUANCE OF THE
4 ADVISORY FACT-FINDER'S DECISION TO CONSIDER THE RECOMMENDATIONS
5 AND FURTHER NEGOTIATE THE DISPUTED ISSUES. NO LATER THAN THE END
6 OF THE FOURTEEN-DAY PERIOD, THE PUBLIC EMPLOYER AND THE
7 EXCLUSIVE REPRESENTATIVE SHALL NOTIFY THE OTHER PARTY WHETHER
8 IT ACCEPTS OR REJECTS THE RECOMMENDATIONS ON EACH OF THE
9 REMAINING UNRESOLVED ISSUES. IF EITHER PARTY REJECTS ANY OF THE
10 RECOMMENDATIONS, THE FINAL OFFERS OF THE PARTIES ON EACH OF THE
11 ISSUES REMAINING UNRESOLVED SHALL BE SUBMITTED AS ALTERNATIVE
12 SINGLE MEASURES TO A VOTE OF THE QUALIFIED ELECTORS OF THE PUBLIC
13 EMPLOYER AT A SPECIAL ELECTION. THE REGISTERED ELECTORS SHALL
14 SELECT EITHER THE FINAL OFFER OF THE PUBLIC EMPLOYER OR THE FINAL
15 OFFER OF THE EXCLUSIVE REPRESENTATIVE, AS PRESENTED TO THE
16 ADVISORY FACT FINDER. ISSUES AGREED TO DURING THE FOURTEEN-DAY
17 PERIOD SPECIFIED IN THIS SUBSECTION (9) MUST NOT BE INCLUDED IN THE
18 FINAL OFFERS SUBMITTED TO THE REGISTERED ELECTORS. THE PARTY
19 THAT REFUSES TO ACCEPT THE RECOMMENDATIONS OF THE ADVISORY
20 FACT FINDER SHALL PAY THE COST OF THE SPECIAL ELECTION. THE PUBLIC
21 EMPLOYER AND THE EXCLUSIVE REPRESENTATIVE SHALL PAY THE COST OF
22 THE SPECIAL ELECTION EQUALLY, IF BOTH PARTIES REFUSE TO ACCEPT THE
23 ADVISORY FACT-FINDER'S RECOMMENDATIONS.

24 (b) THE SPECIAL ELECTION MUST NOT BE HELD IN CONJUNCTION
25 WITH OR ON THE SAME DAY AS ANY OTHER ELECTION AND MAY BE HELD
26 ON ANY DATE SET BY THE PUBLIC EMPLOYER AS LONG AS AT LEAST THIRTY
27 DAYS' NOTICE IS GIVEN.

1 (10) NOTHING IN THIS PART 2 PROHIBITS OR IMPEDES A PUBLIC
2 EMPLOYER AND AN EXCLUSIVE REPRESENTATIVE FROM CONTINUING TO
3 BARGAIN IN GOOD FAITH OR FROM USING THE SERVICES OF A MEDIATOR AT
4 ANY TIME DURING COLLECTIVE BARGAINING. IF AT ANY POINT IN THE
5 ADVISORY FACT-FINDING PROCEEDINGS THE PARTIES ARE ABLE TO
6 CONCLUDE THE DISPUTE, OR ANY PORTION THEREOF, WITH A VOLUNTARILY
7 REACHED AGREEMENT, THE PARTIES SHALL NOTIFY THE ADVISORY FACT
8 FINDER OF THE AGREEMENT, AND THE ADVISORY FACT FINDER SHALL
9 TERMINATE THE PROCEEDINGS OR DISCONTINUE THE CONSIDERATION OF
10 AN ISSUE RESOLVED BY THE AGREEMENT. IF AN AGREEMENT IS REACHED
11 AFTER A SPECIAL ELECTION HAS BEEN SCHEDULED AND THE ELECTION
12 CANNOT BE CANCELED OR ISSUES CANNOT BE REMOVED FROM THE
13 BALLOT, THE VOTES ON THE FINAL OFFERS OF THE PUBLIC EMPLOYER AND
14 THE EXCLUSIVE REPRESENTATIVE MUST NOT BE COUNTED.

15 (11) DURING IMPASSE RESOLUTION PROCEEDINGS CONDUCTED
16 PURSUANT TO THIS SECTION, EXISTING COMPENSATION, HOURS, AND
17 OTHER TERMS AND CONDITIONS OF EMPLOYMENT MUST NOT BE CHANGED
18 EXCEPT BY AN AGREEMENT BETWEEN THE PUBLIC EMPLOYER AND THE
19 EXCLUSIVE REPRESENTATIVE, BUT ANY SUCH AGREEMENT MUST BE
20 WITHOUT PREJUDICE TO EITHER PARTY'S RIGHTS OR POSITION IN THE
21 ADVISORY FACT-FINDER'S HEARING. ANY CHANGES IN THE COLLECTIVE
22 BARGAINING AGREEMENT FROM THE EXPIRED AGREEMENT MUST BE
23 RETROACTIVE TO JANUARY 1 UNLESS THE PARTIES AGREE OTHERWISE.

24 (12) THE PARTIES MAY AGREE TO EXTEND ANY OF THE TIME LIMITS
25 SPECIFIED IN THIS PART 2 EXCEPT THE DATE FOR BEGINNING BARGAINING.

26 (13) THE PUBLIC EMPLOYER SHALL MODIFY ANY ADOPTED BUDGET
27 TO COMPLY WITH THE RESULTS OF ACCEPTED RECOMMENDATIONS FROM

1 AN ADVISORY FACT FINDER OR OF A SPECIAL ELECTION HELD PURSUANT TO
2 THIS SECTION.

3 **29-5-209. Strikes prohibited.** A FIREFIGHTER OR EMPLOYEE
4 ORGANIZATION SHALL NOT STRIKE. NOTHING IN THIS SECTION LIMITS OR
5 IMPAIRS THE RIGHT OF ANY FIREFIGHTER TO LAWFULLY EXPRESS OR
6 COMMUNICATE A COMPLAINT OR OPINION ON ANY MATTER RELATED TO
7 COMPENSATION, HOURS, OR TERMS AND CONDITIONS OF EMPLOYMENT.

8 **29-5-210. Existing bargaining relationships.** (1) A BARGAINING
9 UNIT IN EXISTENCE ON THE EFFECTIVE DATE OF THIS PART 2 REMAINS THE
10 BARGAINING UNIT UNLESS THE BARGAINING UNIT IS MODIFIED BY
11 VOLUNTARY AGREEMENT BETWEEN THE EXCLUSIVE REPRESENTATIVE AND
12 THE PUBLIC EMPLOYER OR AS OTHERWISE PROVIDED BY THIS PART 2.

13 (2) AN EMPLOYEE ORGANIZATION RECOGNIZED BY A PUBLIC
14 EMPLOYER AS THE EXCLUSIVE REPRESENTATIVE FOR A BARGAINING UNIT
15 AS OF THE EFFECTIVE DATE OF THIS SECTION REMAINS THE EXCLUSIVE
16 REPRESENTATIVE FOR THE BARGAINING UNIT UNTIL THE EMPLOYEE
17 ORGANIZATION IS DECERTIFIED AS THE EXCLUSIVE REPRESENTATIVE BY
18 VOTE OF A MAJORITY OF THE FIREFIGHTERS IN THE BARGAINING UNIT IN
19 ACCORDANCE WITH SECTION 29-5-211.

20 (3) ALL EXISTING BARGAINING RELATIONSHIPS OF FIREFIGHTERS,
21 WHETHER CREATED BY CHARTER, ORDINANCE, RESOLUTION, OR
22 VOLUNTARY RECOGNITION, REMAIN IN EFFECT UNDER THE TERMS,
23 CONDITIONS, AND PROCEDURES IN EFFECT UNTIL AN ELECTION IS HELD BY
24 PETITION OF THE EXISTING EXCLUSIVE REPRESENTATIVE PURSUANT TO
25 SECTION 29-5-211. IF AN EXCLUSIVE REPRESENTATIVE IS ELECTED FOR A
26 BARGAINING UNIT IN AN ELECTION, THIS PART 2 APPLIES TO THE
27 BARGAINING UNIT, REGARDLESS OF ANY CHARTER, ORDINANCE,

1 RESOLUTION, OR VOLUNTARY RECOGNITION. AN ELECTION MAY NOT BE
2 HELD DURING THE TERM OF A COLLECTIVE BARGAINING AGREEMENT THAT
3 IS IN EXISTENCE ON THE EFFECTIVE DATE OF THIS PART 2.

4 (4) NOTHING IN THIS SECTION CHANGES OR ABROGATES A
5 COLLECTIVE BARGAINING UNIT THAT IS IN EXISTENCE ON THE EFFECTIVE
6 DATE OF THIS PART 2.

7 **29-5-211. Election of exclusive representative.** (1) UPON THE
8 FILING OF A PETITION BY A FIREFIGHTER, GROUP OF FIREFIGHTERS, OR
9 EMPLOYEE ORGANIZATION THAT IS SIGNED BY A SIMPLE MAJORITY OF
10 THE FIREFIGHTERS IN THE BARGAINING UNIT, THE DIRECTOR SHALL
11 CONTACT THE AMERICAN ARBITRATION ASSOCIATION, OR ITS SUCCESSOR
12 ORGANIZATION, WHICH SHALL CONDUCT AN ELECTION, BY SECRET BALLOT,
13 IN THE BARGAINING UNIT TO CERTIFY AN EMPLOYEE ORGANIZATION AS THE
14 EXCLUSIVE REPRESENTATIVE OF THE BARGAINING UNIT FOR COLLECTIVE
15 BARGAINING OR TO DECERTIFY AN EMPLOYEE ORGANIZATION THAT WAS
16 PREVIOUSLY CERTIFIED OR IS RECOGNIZED BY THE PUBLIC EMPLOYER AS
17 THE EXCLUSIVE REPRESENTATIVE OF THE BARGAINING UNIT.

18 (2) IN A CERTIFICATION ELECTION, THE EMPLOYEE ORGANIZATION
19 THAT RECEIVES THE MAJORITY OF THE VOTES CAST IN AN ELECTION MUST
20 BE CERTIFIED AS THE EXCLUSIVE REPRESENTATIVE OF THE BARGAINING
21 UNIT.

22 (3) IN A DECERTIFICATION ELECTION, THE EMPLOYEE
23 ORGANIZATION REMAINS THE EXCLUSIVE REPRESENTATIVE UNLESS A
24 MAJORITY OF THE FIREFIGHTERS IN THE BARGAINING UNIT VOTE TO
25 DECERTIFY THE EMPLOYEE ORGANIZATION AS THE EXCLUSIVE
26 REPRESENTATIVE OF THE BARGAINING UNIT.

27 (4) THE AMERICAN ARBITRATION ASSOCIATION, OR ITS SUCCESSOR

1 ORGANIZATION, SHALL CERTIFY THE RESULTS OF THE ELECTION TO THE
2 DIRECTOR, THE PUBLIC EMPLOYER, AND THE EMPLOYEE ORGANIZATION.
3 THE ELECTION MUST BE CONDUCTED PURSUANT TO THE RULES OF THE
4 AMERICAN ARBITRATION ASSOCIATION OR ITS SUCCESSOR ORGANIZATION.
5 THE PETITIONER SHALL PAY ALL COSTS OF THE ELECTION.

6 **29-5-212. Right to sue.** A FIREFIGHTER OR EMPLOYEE
7 ORGANIZATION MAY ENFORCE ANY PROVISION OF THIS PART 2 BY FILING
8 SUIT IN A DISTRICT COURT IN WHICH VENUE IS PROPER.

9

10 **SECTION 2. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.