Reprinted
February 24, 2015

SENATE BILL No. 538

DIGEST OF SB 538 (Updated February 23, 2015 8:18 pm - DI 71)

Citations Affected: IC 20-29.

Synopsis: Teacher collective bargaining. Adds a definition of "professional employee organization". Provides that a school employer shall submit a copy of the affidavit submitted by the exclusive representative indicating the number of teachers who are members of the exclusive representative to the board. Provides that if the Indiana education employment relations board (board) determines that the affidavit indicates that the exclusive representative does not represent

(Continued next page)

Effective: July 1, 2015.

Yoder, Kruse

January 14, 2015, read first time and referred to Committee on Pensions & Labor.
February 5, 2015, amended, reported favorably — Do Pass.
February 23, 2015, read second time, amended, ordered engrossed.

a majority of the employees, the board shall investigate the affidavit. Provides that after investigation by the board, the board may, if necessary, hold a hearing concerning representation by the school employee organization, and, based on the results of the hearing, direct an election by secret ballot within the bargaining unit to determine representation. Provides that an election based on the investigation of an affidavit may be held only once in a five year period. Provides that the board must rule on an appeal of a factfinder's decision within 60 days of receipt of the notice of appeal. Provides that factfinding by a factfinder may not last longer than 30 days. Provides that the public hearing for a collective bargaining impasse proceeding may begin not earlier than October 1 in the first year of the state budget biennium and must be concluded by February 1 of the year following the commencement of bargaining. Requires the board to develop and maintain a form summarizing a school employee's rights and protections. Requires a school corporation, beginning in the 2016-2017 school year, to distribute the form to the school corporation's employees. Requires a school corporation to establish and maintain procedures or policies that provide equal treatment of and equal access for professional employee organizations.

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First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 538

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 20-29-2-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 11.5. "Professional employee organization" means a school employee organization with members who are employees of a governing body that exists for the primary purpose of engaging in negotiations with the governing body regarding the terms and conditions of employment or for the purpose of providing professional development or liability protection to certificated employees. The term does not include an organization or entity whose primary purpose is commercial.**

SECTION 2. IC 20-29-3-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 15. (a) Before July 30, 2015, the board shall develop and maintain a form that summarizes a school employee's rights**

and protections under IC 20-28 and IC 20-29. The form must be made available on the board's Internet web site.

(b) Beginning with the 2015-2016 school year, a school corporation shall distribute copies of the form developed and maintained under subsection (a) to the school corporation's school employees.

SECTION 3. IC 20-29-4-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 4. (a) Except as provided in subsection (d), a school corporation shall establish and maintain procedures or policies that provide equal treatment of and equal access for professional employee organizations. A school corporation may not deny professional employee organizations equal access to school employees if a professional employee organization requests access to the same extent that access is granted to any other professional employee organization. A professional employee organization may not be granted the exclusive privilege of access to the use of school facilities for meetings, the use of bulletin boards in a school facility, or the use of school mail systems.**

(b) A governing body may not grant access to any school employee's mailbox or electronic mail account to a professional employee organization without giving access to any other professional employee organization.

(c) If a professional employee organization is permitted to attend a school employee orientation meeting, then any other professional employee organization that requests permission to attend the meeting shall be granted permission.

(d) For purposes of subsection (a), access to school employees includes the following:

(1) Setting up informational tables at inservice, orientation, or other similar meetings.

(2) Speaking at inservice, orientation, or other similar meetings.

(3) Distributing information by mail or electronic mail to school employees.

(4) Using school corporation meeting rooms during nonwork hours.

(5) Representing employment matters when requested by a school employee.

(6) Sponsoring a school employee activity or event.

(e) The board may adopt rules under IC 4-22-2 necessary to administer this section.

SECTION 4. IC 20-29-5-3, AS AMENDED BY P.L.1-2006, SECTION 333, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) If an exclusive school employee organization is not determined under section 2 of this chapter, the determination of whether a school employee organization shall be the exclusive representative shall be determined under this section.

(b) A school employee organization may file a petition asserting that:

(1) twenty percent (20%) of the employees in an appropriate unit wish to be represented for collective bargaining by the school employee organization as exclusive representative; or

(2) the designated exclusive representative is no longer the representative of the majority of school employees in the unit.

(c) The school employer may file a petition asserting:

(1) that one (1) or more school employee organizations have presented to the school employer a claim to be recognized as the exclusive representative in an appropriate unit; or

(2) that the school employer has good faith doubt that the previously certified school employee organization represents a majority of employees in the bargaining unit.

(d) Twenty percent (20%) of the school employees in a unit may file a petition asserting that the designated exclusive representative is no longer the representative of the majority of school employees in the unit.

(e) If a copy of an affidavit sent to the board under section 7(f) of this chapter indicates that the school employee organization no longer represents a majority of the school employees in the unit, the board shall investigate the affidavit under subsection (f).

~~(e)~~ **(f)** The board shall investigate a petition filed under subsection (b), (c), ~~or~~ (d), **or an affidavit described in subsection (e).** If the board has reasonable cause to believe that a question exists as to whether the designated exclusive representative or any school employee organization represents a majority of the school employees in a unit, the board shall provide for an appropriate hearing within thirty (30) days. In holding a hearing, the board is not required to comply with IC 4-21.5.

~~(f)~~ **(g)** If the board finds, based on the record of a hearing held under subsection ~~(c),~~ **(f),** that a question of representation exists, the board shall direct an election by secret ballot in a unit the board determines to be appropriate.

~~(g)~~ **(h)** Certification as the exclusive representative may be granted

only to a school employee organization that has been selected in a secret ballot election under subsection ~~(f),~~ **(g),** by a majority of all the employees in an appropriate unit as their representative.

~~(h)~~ **(i)** An election described in subsection ~~(f)~~ **(g)** may not be held in a bargaining unit if a valid election has been held in the preceding:

(1) twenty-four (24) month period, **in response to a petition filed under subsection (b), (c), or (d); or**

(2) five (5) year period, in response to an affidavit described in subsection (e).

SECTION 5. IC 20-29-5-7, AS ADDED BY P.L.48-2011, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) This section does not apply to the bargaining team for the exclusive representative.

(b) The percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created district wide committee may not exceed the percentage of teachers in the school corporation who are members of the exclusive representative. If multiplying the number of teacher positions on the committee by the percentage of teachers in the school corporation who are members of the exclusive representative does not produce a whole number, the product must be rounded up to the nearest whole number. The percentage of positions applies to the number of teacher positions on a committee and not to the total number of positions on a committee.

(c) The percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created school wide committee may not exceed the percentage of teachers in the school who are members of the exclusive representative. If multiplying the number of teacher positions on the committee by the percentage of teachers in the school who are members of the exclusive representative does not produce a whole number, the product must be rounded up to the nearest whole number. The percentage of positions applies to the number of teacher positions on a committee and not to the total number of positions on a committee.

(d) A committee to which this section applies may not address subjects of bargaining under this article. A school employer's appointment of a teacher to a committee is not an unfair practice as it relates to the appointment of the teacher committee members.

(e) By September 15 of each school year, the local president or other officer or designee of the exclusive representative shall certify by affidavit to the school employer the number of teachers in each school and in the entire school corporation who are members of the exclusive representative.

(f) By October 1 of each school year, the school employer shall provide the board with a copy of the affidavit submitted to the school board under subsection (e).

SECTION 6. IC 20-29-6-15.1, AS ADDED BY P.L.229-2011, SECTION 181, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 15.1. (a) If an agreement has not been reached on the items permitted to be bargained collectively under section 4 of this chapter, within fifteen (15) days after mediation under section 13 of this chapter has ended, the board shall initiate factfinding.

(b) Factfinding must culminate in the factfinder imposing contract terms on the parties. The factfinder must select one (1) party's last best offer as the contract terms. The factfinder's order must be restricted to only those items permitted to be bargained and included in the collective bargaining agreement under section 4 of this chapter and must not put the employer in a position of deficit financing (as defined in IC 20-29-2-6). The factfinder's order may not impose terms beyond those proposed by the parties in their last, best offers.

(c) Costs for the factfinder shall be borne equally by the parties.

(d) Factfinding may not last longer than ~~fifteen (15)~~ **thirty (30)** days.

SECTION 7. IC 20-29-6-18, AS AMENDED BY P.L.6-2012, SECTION 140, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 18. (a) Either party may appeal the decision of the factfinder under IC 20-29-6-15.1. The appeal must be filed not later than thirty (30) days after receiving the factfinder's decision.

(b) The board's decision must be restricted to only those items permitted to be bargained and included in the collective bargaining agreement under section 4 of this chapter and must not put the employer in a position of deficit financing, as defined in IC 20-29-2-6. The board's decision may not impose terms beyond those proposed by the parties in their last, best offers.

(c) The board must rule on the appeal within ~~thirty (30)~~ **sixty (60)** days after receipt of notice of appeal.

SECTION 8. IC 20-29-8-7, AS AMENDED BY P.L.229-2011, SECTION 183, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) When a factfinder is requested or required under IC 20-29-6, the board shall appoint a factfinder from the staff or panel established under section 6 of this chapter.

(b) The factfinder shall make an investigation and hold hearings as the factfinder considers necessary in connection with a dispute.

(c) The factfinder:

(1) may restrict the factfinder's findings to those issues that the factfinder determines significant;

(2) must restrict the findings to the items listed in IC 20-29-6-4; and

(3) may not impose terms beyond those proposed by the parties in their last, best offers.

(d) The factfinder may use evidence furnished to the factfinder by:

(1) the parties;

(2) the board;

(3) the board's staff; or

(4) any other state agency.

(e) The factfinder shall conduct the factfinding hearing in public in a room or facility owned by the county or local unit of government located in the county in which the school employer is located, or if the school employer is located in more than one (1) county, in the county in which the greatest number of students who attend the school employer's schools reside. The public hearing may begin not earlier than October 1 in the first year of the state budget biennium and must be concluded by ~~December 31~~ **February 1** of the ~~same~~ year **following the commencement of bargaining.**

(f) The factfinding process may not exceed ~~fifteen (15)~~ **thirty (30)** days from beginning to end, and not more than two (2) of those days may be used for public testimony, which may be taken at the discretion of the factfinder. During the public hearing, each party shall present fully its last, best offer, including the fiscal rationale for the offer. Only general operating funds and those funds certified by the department of education and the department of local government finance may be considered as a source of the funding for items, unless the school funding formula allows other funds to be used for certain items.

(g) The factfinder shall make a recommendation as to the settlement of the disputes over which the factfinder has jurisdiction.

(h) The factfinder shall:

(1) make the investigation, hearing, and findings as expeditiously as the circumstances permit; and

(2) deliver the findings to the parties and to the board.

(i) The board, after receiving the findings and recommendations, may make additional findings and recommendations to the parties based on information in:

(1) the report; or

(2) the board's own possession.

The board may not make any recommendations to the parties related to

any items not specifically identified in IC 20-29-6-4.

(j) At any time within five (5) days after the findings and recommendations are delivered to the board, the board may make the findings and recommendations of the factfinder and the board's additional findings and recommendations, if any, available to the public through news media and other means the board considers effective.

(k) The board shall make the findings and recommendations described in subsection (j) available to the public not later than ten (10) days after the findings and recommendations are delivered to the board.

COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 538, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 11, after "for the" insert "**primary**".

Page 3, line 11, after "purpose" delete ", in whole or".

Page 3, line 12, delete "in part,".

Page 3, line 15, after "employees." insert "**The term does not include an organization or entity whose primary purpose is commercial.**".

Page 5, line 1, strike "Twenty" and insert "**Ten**".

Page 5, line 1, strike "(20%)" and insert "**(10%)**".

Page 7, delete lines 14 through 42.

Page 8, delete lines 1 through 11.

Page 9, delete lines 30 through 40.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 538 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 6, Nays 5.

SENATE MOTION

Madam President: I move that Senate Bill 538 be amended to read as follows:

Page 5, line 2, reset in roman "Twenty".

Page 5, line 2, delete "Ten".

Page 5, line 2, reset in roman "(20%)".

Page 5, line 2, delete "(10%)".

(Reference is to SB 538 as printed February 6, 2015.)

YODER

SENATE MOTION

Madam President: I move that Senate Bill 538 be amended to read as follows:

Page 1, delete lines 1 through 14.

Delete page 2.

Page 3, delete lines 1 through 5.

Renumber all SECTIONS consecutively.

(Reference is to SB 538 as printed February 6, 2015.)

TALLIAN

SENATE MOTION

Madam President: I move that Senate Bill 538 be amended to read as follows:

Page 3, line 9, delete "any one (1) or more organizations, agencies," and insert "**a school employee organization with members who are employees of a governing body**".

Page 3, delete line 10.

Page 3, line 11, delete "employees participate, and that exist" and insert "**that exists**".

Page 3, line 12, delete "a" and insert "**the**".

Page 4, delete lines 21 through 22.

(Reference is to SB 538 as printed February 6, 2015.)

TALLIAN