First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 09-0826.01 Kristen Forrestal **SENATE BILL 09-180**

SENATE SPONSORSHIP

Tochtrop, Carroll M.

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Casso,

Senate Committees
State, Veterans & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING COLLECTIVE BARGAINING BY EMPLOYEES OF PUBLIC**
102 **SAFETY AGENCIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Grants firefighters and law enforcement officers the right to:

! Organize, form, join, or assist an employee organization or to 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;

and

! Be represented by their exclusive representative without discrimination.

States that an employee organization recognized or elected for collective bargaining shall be the exclusive representative (exclusive representative) of all the firefighters or law enforcement officers in an agency (bargaining unit) for collective bargaining. Prohibits a fire department, police department, or sheriff's department (public employer) from bargaining on matters covered by the act with any other employee or group. 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. Allows an exclusive representative to have dues and other moneys deducted from the pay of firefighters or law enforcement officers who authorize the deduction.

Authorizes and obligates a public employer and an exclusive representative to bargain collectively in good faith. States that any agreements negotiated between an exclusive representative and a public employer (the parties), along with any terms approved by the voters of the political subdivision of the public employer, shall constitute the collective bargaining agreement between the parties. Requires a collective bargaining agreement to be for a term of one to 3 years. Allows a party to request collective bargaining by sending notice to the other party by a specified date. Requires the parties to begin collective bargaining within a specified time after the notice. Deems an impasse to exist if the parties fail to reach a collective bargaining agreement within a specified time after the beginning of collective bargaining. States that 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, 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. Specifies the factors that the advisory fact-finder shall consider. Gives the parties a specified time to consider the advisory fact-finder's recommendations and conduct further negotiations. If either party rejects the recommendations, states that the final offers of the parties on the unresolved issues shall be submitted to the voters of the political subdivision of the public employer at a special election.

Prohibits firefighters, law enforcement officers, and employee organizations from striking.

States that existing bargaining units, exclusive representatives, and bargaining relationships as of the effective date of the act shall remain unless modified by agreement or election in accordance with the act.

Allows firefighters, law enforcement officers, and employee organizations to petition the division of labor in the department of labor and employment to conduct secret-ballot elections to certify or decertify an employee organization as the exclusive representative of a bargaining unit.

Grants a firefighter, law enforcement officer, or employee organization standing to sue to enforce the provisions of the act.

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

SECTION 1. Article 5 of title 29, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 2

COLLECTIVE BARGAINING

29-5-201. Short title. THIS PART 2 SHALL BE KNOWN AND MAY BE CITED AS THE "FIREFIGHTER AND LAW ENFORCEMENT OFFICER COLLECTIVE BARGAINING ACT".

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

(a) THE PEOPLE OF COLORADO HAVE A FUNDAMENTAL INTEREST IN THE DEVELOPMENT OF HARMONIOUS AND COOPERATIVE RELATIONSHIPS BETWEEN PUBLIC EMPLOYERS AND PUBLIC EMPLOYEES, INCLUDING FIREFIGHTERS AND LAW ENFORCEMENT OFFICERS;

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

(c) THE DENIAL BY SOME PUBLIC EMPLOYERS OF THE RIGHT OF FIREFIGHTERS AND LAW ENFORCEMENT OFFICERS TO ORGANIZE AND BARGAIN COLLECTIVELY LEADS TO VARIOUS FORMS OF STRIFE AND UNREST, WHICH OBSTRUCTS PUBLIC SAFETY. UNRESOLVED DISPUTES BETWEEN FIREFIGHTERS, LAW ENFORCEMENT OFFICERS, AND THEIR PUBLIC

EMPLOYERS HARM THE PUBLIC, THE GOVERNMENTAL AGENCIES, AND THE EMPLOYEES INVOLVED.

(d) EXPERIENCE HAS PROVEN THAT LEGAL PROTECTION OF THE RIGHT OF FIREFIGHTERS AND LAW ENFORCEMENT OFFICERS TO ORGANIZE SAFEGUARDS THE PUBLIC SAFETY BY REMOVING CERTAIN RECOGNIZED SOURCES OF STRIFE AND UNREST AND BY ENCOURAGING PRACTICES FUNDAMENTAL TO THE AMICABLE RESOLUTION OF DISPUTES OVER COMPENSATION, HOURS, AND TERMS AND CONDITIONS OF EMPLOYMENT AND BY CREATING EQUALITY OF BARGAINING POWER BETWEEN PUBLIC EMPLOYERS AND THE FIREFIGHTERS AND LAW ENFORCEMENT OFFICERS THAT THEY EMPLOY;

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

(I) PROTECTING THE EXERCISE BY FIREFIGHTERS AND LAW ENFORCEMENT OFFICERS OF FULL FREEDOM OF ASSOCIATION, SELF-ORGANIZATION, AND OTHER MUTUAL AID OR PROTECTION;

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

(III) PROTECTING THE RIGHT OF FIREFIGHTERS AND LAW ENFORCEMENT OFFICERS TO DESIGNATE REPRESENTATIVES OF THEIR OWN CHOOSING FOR THE PURPOSE OF COLLECTIVE BARGAINING; AND

(IV) OBLIGATING PUBLIC EMPLOYERS AND EMPLOYEE ORGANIZATIONS OF FIREFIGHTERS AND LAW ENFORCEMENT OFFICERS THAT ARE CERTIFIED OR RECOGNIZED AS REPRESENTING THEIR FIREFIGHTERS AND LAW ENFORCEMENT OFFICERS TO ENTER INTO COLLECTIVE BARGAINING NEGOTIATIONS WITH THE WILLINGNESS TO RESOLVE DISPUTES

RELATING TO COMPENSATION, HOURS, AND THE TERMS AND CONDITIONS OF EMPLOYMENT AND TO REDUCE TO WRITING ANY AGREEMENTS REACHED THROUGH SUCH NEGOTIATIONS;

(f) COLLECTIVE BARGAINING FOR FIREFIGHTERS AND LAW ENFORCEMENT OFFICERS IS A MATTER OF STATEWIDE CONCERN THAT AFFECTS THE PUBLIC SAFETY AND GENERAL WELFARE, AS THE COLORADO SUPREME COURT HELD IN THE CASES OF *FRATERNAL ORDER OF POLICE V. CITY OF COMMERCE CITY*, 996 P.2d 133 (COLO. 2000) AND *CITY OF AURORA V. AURORA FIREFIGHTERS' PROTECTIVE ASSOCIATION*, 193 COLO. 437, 566 P.2d 1356 (1977). THE CITIZENS OF COLORADO HAVE THE RIGHT TO EXPECT A CONSISTENTLY HIGH LEVEL OF PUBLIC SAFETY THROUGHOUT THE STATE. CONSISTENTLY HIGH LEVELS OF PUBLIC SAFETY THROUGHOUT THE STATE ALLOWS THE ECONOMY OF COLORADO TO GROW AND PROSPER.

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

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

(2) "BARGAINING UNIT" MEANS ANY OF THE FOLLOWING, EXCLUDING SUPERVISORS AS DEFINED IN SUBSECTION (16) OF THIS SECTION:

(a) ALL FIREFIGHTERS EMPLOYED BY THE SAME PUBLIC EMPLOYER; OR

(b) ALL LAW ENFORCEMENT OFFICERS EMPLOYED BY THE SAME PUBLIC EMPLOYER; EXCEPT THAT, WHEN A PUBLIC EMPLOYER THAT IS A

HOME RULE MUNICIPALITY HAS MULTIPLE LAW ENFORCEMENT AGENCIES, EACH LAW ENFORCEMENT AGENCY IS A SEPARATE BARGAINING UNIT.

(3) "COLLECTIVE BARGAINING" MEANS THE PERFORMANCE OF THE MUTUAL OBLIGATION OF A PUBLIC EMPLOYER, THROUGH ITS DESIGNATED REPRESENTATIVES, AND AN EXCLUSIVE REPRESENTATIVE TO MEET AT REASONABLE TIMES AND PLACES AND NEGOTIATE IN GOOD FAITH WITH RESPECT TO COMPENSATION, HOURS, AND TERMS AND CONDITIONS OF EMPLOYMENT, TO MEET AND NEGOTIATE IN GOOD FAITH ANY QUESTION ARISING UNDER A COLLECTIVE BARGAINING AGREEMENT, AND TO EXECUTE A WRITTEN CONTRACT INCORPORATING ANY AGREEMENTS REACHED.

(4) "COLLECTIVE BARGAINING AGREEMENT" MEANS AN AGREEMENT NEGOTIATED BETWEEN AN EXCLUSIVE REPRESENTATIVE AND A PUBLIC EMPLOYER IN ADDITION TO ANY TERMS APPROVED BY THE QUALIFIED ELECTORS OF A PUBLIC EMPLOYER PURSUANT TO SECTION 29-5-208.

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

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

(7) (a) "EMPLOYEE ORGANIZATION" MEANS:

(I) FOR FIREFIGHTERS, AN ORGANIZATION THAT ADMITS FIREFIGHTERS EMPLOYED BY A PUBLIC EMPLOYER TO MEMBERSHIP AND

REPRESENTS FIREFIGHTERS IN COLLECTIVE BARGAINING; OR

(II) FOR LAW ENFORCEMENT OFFICERS, AN ORGANIZATION THAT ADMITS LAW ENFORCEMENT OFFICERS AND ENGAGES EXCLUSIVELY IN THE REPRESENTATION OF LAW ENFORCEMENT OFFICERS, INCLUDING REPRESENTATION IN COLLECTIVE BARGAINING.

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

(8) "EXCLUSIVE REPRESENTATIVE" MEANS THE EMPLOYEE ORGANIZATION RECOGNIZED BY THE PUBLIC EMPLOYER OR ELECTED BY A MAJORITY OF FIREFIGHTERS OR LAW ENFORCEMENT OFFICERS IN A BARGAINING UNIT PURSUANT TO SECTION 29-5-211.

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

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

(11) "LAW ENFORCEMENT AGENCY" MEANS THE POLICE DEPARTMENT OR THE SHERIFF'S DEPARTMENT OF A POLITICAL SUBDIVISION OF THE STATE.

(12) "LAW ENFORCEMENT OFFICER" MEANS AN EMPLOYEE OF A LAW ENFORCEMENT AGENCY, INCLUDING A POLICE OFFICER OR DEPUTY

SHERIFF BUT EXCLUDING A PERSON EMPLOYED IN THE PERSONNEL SYSTEM OF THE STATE PURSUANT TO SECTION 13 OF ARTICLE XII OF THE STATE CONSTITUTION. "LAW ENFORCEMENT OFFICER" DOES NOT INCLUDE CLERICAL PERSONNEL, RESERVE OFFICERS, OR CADETS.

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

(14) "PUBLIC EMPLOYER" MEANS:

(a) FOR FIREFIGHTERS, A MUNICIPALITY, INCLUDING A HOME RULE MUNICIPALITY, SPECIAL DISTRICT, FIRE AUTHORITY, OR COUNTY IMPROVEMENT DISTRICT, THAT OFFERS FIRE PROTECTION SERVICE AND EMPLOYS TWO OR MORE FIREFIGHTERS; OR

(b) FOR LAW ENFORCEMENT OFFICERS, A POLITICAL SUBDIVISION OF THE STATE, INCLUDING A HOME RULE MUNICIPALITY, THAT EMPLOYS TWO OR MORE LAW ENFORCEMENT OFFICERS.

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

(a) FAILURE TO REPORT FOR DUTY;

(b) WILLFUL ABSENCE FROM A POSITION;

(c) STOPPING OR DELIBERATELY SLOWING WORK;

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

(e) INTERRUPTING THE OPERATIONS OF THE PUBLIC EMPLOYER.

(16) "SUPERVISOR" MEANS:

(a) FOR A FIREFIGHTER, THE CHIEF AND THE OFFICER OR OFFICERS

IN THE RANK OR POSITION IMMEDIATELY BELOW THE CHIEF WHO REPORTS DIRECTLY TO THE CHIEF. NO OTHER FIREFIGHTER SHALL BE INCLUDED IN THE DEFINITION OF SUPERVISOR FOR PURPOSES OF THIS PART 2.

(b) FOR A LAW ENFORCEMENT OFFICER, A LAW ENFORCEMENT OFFICER WHO HAS THE POSITION OF SHERIFF, UNDERSHERIFF, CHIEF, COMMANDER, OR ANY RANK THAT REPORTS DIRECTLY TO THE CHIEF EXECUTIVE OF THE LAW ENFORCEMENT AGENCY. NO OTHER LAW ENFORCEMENT OFFICER SHALL BE INCLUDED IN THE DEFINITION OF SUPERVISOR FOR PURPOSES OF THIS PART 2.

(17) "TERMS AND CONDITIONS OF EMPLOYMENT" MEANS ALL MATTERS AFFECTING THE EMPLOYMENT OF FIREFIGHTERS OR LAW ENFORCEMENT OFFICERS EXCEPT THE BUDGET AND ORGANIZATIONAL STRUCTURE OF THE PUBLIC EMPLOYER.

29-5-204. Rights of firefighters and law enforcement officers. (1) FIREFIGHTERS AND LAW ENFORCEMENT OFFICERS, INCLUDING THOSE WHO CHOOSE TO MAINTAIN EXISTING COLLECTIVE BARGAINING RELATIONSHIPS AS PROVIDED IN SECTION 29-5-210, SHALL HAVE THE RIGHT TO:

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

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

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

(d) BE REPRESENTED BY THEIR EXCLUSIVE REPRESENTATIVE, IF

ANY, WITHOUT DISCRIMINATION.

(2) NOTHING IN THIS PART 2 SHALL BE CONSTRUED TO LIMIT THE RIGHT OF A SUPERVISOR TO BE A MEMBER OF AN EMPLOYEE ORGANIZATION.

29-5-205. Employee organization as exclusive representative. (1) THE EMPLOYEE ORGANIZATION RECOGNIZED OR ELECTED FOR THE PURPOSE OF COLLECTIVE BARGAINING SHALL BE THE EXCLUSIVE REPRESENTATIVE OF ALL THE FIREFIGHTERS OR LAW ENFORCEMENT OFFICERS IN THE BARGAINING UNIT FOR THE PURPOSE OF COLLECTIVE BARGAINING. THE EXCLUSIVE REPRESENTATIVE SHALL REPRESENT ALL FIREFIGHTERS OR LAW ENFORCEMENT OFFICERS IN THE BARGAINING UNIT WITHOUT DISCRIMINATION. IF AN EXCLUSIVE REPRESENTATIVE EXISTS IN A BARGAINING UNIT, A PUBLIC EMPLOYER SHALL NOT BARGAIN IN REGARD TO MATTERS COVERED BY THIS PART 2 WITH ANY EMPLOYEE, GROUP OF EMPLOYEES IN THE BARGAINING UNIT, OR EMPLOYEE ORGANIZATION OTHER THAN THE EXCLUSIVE REPRESENTATIVE.

(2) NOTHING IN THIS SECTION PREVENTS FIREFIGHTERS OR LAW ENFORCEMENT OFFICERS, INDIVIDUALLY OR AS A GROUP, FROM PRESENTING COMPLAINTS TO A PUBLIC EMPLOYER AND FROM HAVING COMPLAINTS ADJUSTED WITHOUT THE INTERVENTION OF THE EXCLUSIVE REPRESENTATIVE FOR THE BARGAINING UNIT OF WHICH THEY ARE A PART, IF THE EXCLUSIVE REPRESENTATIVE IS GIVEN AN OPPORTUNITY TO BE PRESENT AT THE ADJUSTMENT AND TO EXPRESS ITS VIEWS, AND IF THE ADJUSTMENT IS NOT INCONSISTENT WITH THE TERMS OF AN AGREEMENT THEN IN EFFECT BETWEEN THE PUBLIC EMPLOYER AND THE EXCLUSIVE REPRESENTATIVE. THE ABILITY TO ADJUST COMPLAINTS DESCRIBED IN THIS SUBSECTION (2) DOES NOT INCLUDE THE USE OF ANY PROCESS IN A

COLLECTIVE BARGAINING AGREEMENT TO RESOLVE GRIEVANCES OVER THE APPLICATION AND INTERPRETATION OF THE AGREEMENT BEFORE A NEUTRAL THIRD PARTY.

(3) ANY EMPLOYEE ORGANIZATION THAT HAS BEEN RECOGNIZED OR ELECTED AS AN EXCLUSIVE REPRESENTATIVE SHALL HAVE THE RIGHT TO HAVE ITS DUES, INITIATION FEES, ASSESSMENTS, OR OTHER MONEYS DEDUCTED AND COLLECTED BY THE PUBLIC EMPLOYER FROM THE PAY OF THOSE FIREFIGHTERS OR LAW ENFORCEMENT OFFICERS WITHIN THE BARGAINING UNIT WHO AUTHORIZE, IN WRITING, THE DEDUCTION OF SAID MONEYS. SUCH AUTHORIZATION IS REVOCABLE AT THE FIRE FIGHTER'S OR LAW ENFORCEMENT OFFICER'S WRITTEN REQUEST. SAID DEDUCTIONS SHALL COMMENCE UPON THE EXCLUSIVE REPRESENTATIVE'S WRITTEN REQUEST TO THE PUBLIC EMPLOYER. SUCH RIGHT TO DEDUCTION SHALL BE IN FORCE FOR SO LONG AS THE EMPLOYEE ORGANIZATION REMAINS THE EXCLUSIVE BARGAINING REPRESENTATIVE FOR THE EMPLOYEES IN THE BARGAINING UNIT.

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

29-5-207. Collective bargaining agreement. (1) ANY AGREEMENTS NEGOTIATED BETWEEN AN EXCLUSIVE REPRESENTATIVE AND A PUBLIC EMPLOYER AND ANY TERMS DECIDED BY THE REGISTERED ELECTORS OF THE PUBLIC EMPLOYER PURSUANT TO SECTION 29-5-208 SHALL CONSTITUTE THE COLLECTIVE BARGAINING AGREEMENT BETWEEN

THE PARTIES.

(2) A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO PURSUANT TO THIS PART 2 SHALL BE FOR A TERM OF AT LEAST ONE YEAR AND NO MORE THAN THREE YEARS, BEGINNING JANUARY 1 AND ENDING DECEMBER 31.

(3) COLLECTIVE BARGAINING IS REQUIRED TO TAKE PLACE IF A PARTY REQUESTS COLLECTIVE BARGAINING BY SENDING NOTICE TO THAT EFFECT TO THE OTHER PARTY NO LATER THAN MARCH 1 OF THE LAST YEAR OF THE EXISTING COLLECTIVE BARGAINING AGREEMENT OR, IN THE CASE OF A NEWLY CERTIFIED OR RECOGNIZED EXCLUSIVE REPRESENTATIVE, BY MARCH 1 OF THE YEAR IN WHICH BARGAINING WILL TAKE PLACE. IF NO PARTY REQUESTS BARGAINING UNDER THIS SECTION BY MARCH 1 OF THE LAST YEAR OF AN EXISTING COLLECTIVE BARGAINING AGREEMENT, SAID AGREEMENT WILL CONTINUE FOR THE NEXT CALENDAR YEAR UNLESS THE PARTIES AGREE TO NEGOTIATE AND REACH A VOLUNTARY AGREEMENT ON ALL TERMS OF A NEW CONTRACT.

(4) THE PUBLIC EMPLOYER AND THE EXCLUSIVE REPRESENTATIVE SHALL BEGIN COLLECTIVE BARGAINING FOR THE PURPOSE OF CREATING A NEW COLLECTIVE BARGAINING AGREEMENT NO LATER THAN APRIL 15 AFTER NOTICE TO BEGIN COLLECTIVE BARGAINING IS GIVEN PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(5) IF THE PARTIES FAIL TO REACH A COLLECTIVE BARGAINING AGREEMENT WITHIN THIRTY DAYS AFTER THE BEGINNING OF COLLECTIVE BARGAINING, AN IMPASSE IS DEEMED TO EXIST BETWEEN THE PARTIES.

(6) A COLLECTIVE BARGAINING AGREEMENT MAY CONTAIN PROVISIONS REQUIRING ALL MEMBERS OF THE BARGAINING UNIT, AS A CONDITION OF EMPLOYMENT, TO PAY NECESSARY FEES AND EXPENSES

GERMANE TO COLLECTIVE BARGAINING AND ENFORCEMENT OF A COLLECTIVE BARGAINING AGREEMENT THAT ARE INCURRED BY THE EXCLUSIVE REPRESENTATIVE.

29-5-208. Impasse resolution. (1) IF AN IMPASSE EXISTS BETWEEN A PUBLIC EMPLOYER AND AN EXCLUSIVE REPRESENTATIVE, AN ADVISORY FACT-FINDER SHALL BE APPOINTED IN THE MANNER DESCRIBED IN SUBSECTION (2) OF THIS SECTION.

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

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

(c) WITHIN TEN DAYS AFTER THE LAST LIST IS RETURNED TO THE ARBITRATION ORGANIZATION PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2), OR WITHIN TEN DAYS AFTER THE TIME THE LIST MUST BE RETURNED BY THE PARTIES, WHICHEVER IS EARLIER, THE ARBITRATION

ORGANIZATION SHALL APPOINT ONE ADVISORY FACT-FINDER FROM AMONG THE PERSONS WHO HAVE BEEN APPROVED ON BOTH LISTS AND SHALL NOTIFY THE PARTIES OF THE APPOINTMENT.

(3) THE ADVISORY FACT-FINDER SHALL HOLD A HEARING ON THE UNRESOLVED ISSUES BETWEEN THE PARTIES WITHIN THIRTY DAYS AFTER THE APPOINTMENT OF THE ADVISORY FACT-FINDER. THE ADVISORY FACT-FINDER SHALL GIVE WRITTEN NOTICE OF THE TIME AND PLACE OF THE HEARING TO THE PARTIES NO LATER THAN TEN DAYS BEFORE THE HEARING. THE HEARING SHALL BE INFORMAL, AND THE RULES OF EVIDENCE PREVAILING IN JUDICIAL PROCEEDINGS SHALL NOT BE BINDING. THE ADVISORY FACT-FINDER MAY RECEIVE INTO EVIDENCE ANY DOCUMENTARY EVIDENCE AND OTHER INFORMATION DEEMED RELEVANT BY THE ADVISORY FACT-FINDER. THE ADVISORY FACT-FINDER MAY ADMINISTER OATHS AND REQUIRE BY SUBPOENA THE ATTENDANCE AND TESTIMONY OF WITNESSES AND THE PRODUCTION OF BOOKS, RECORDS, AND OTHER EVIDENCE RELEVANT TO THE ISSUES PRESENTED FOR DETERMINATION. IF A PERSON REFUSES TO OBEY A SUBPOENA OR REFUSES TO TAKE AN OATH OR TO TESTIFY, OR IF ANY WITNESS, PARTY, OR ATTORNEY IS GUILTY OF CONTEMPT WHILE IN ATTENDANCE AT A HEARING, THE ADVISORY FACT-FINDER MAY, OR THE ATTORNEY GENERAL SHALL, IF REQUESTED, INVOKE THE AID OF THE DISTRICT COURT OF THE COUNTY IN WHICH THE HEARING IS BEING HELD, WHICH COURT SHALL ISSUE AN APPROPRIATE ORDER. FAILURE TO OBEY THE ORDER MAY BE PUNISHED BY THE COURT AS CONTEMPT.

(4) THE HEARING CONDUCTED BY THE ADVISORY FACT-FINDER SHALL BE CONCLUDED WITHIN FIFTEEN DAYS AFTER THE HEARING BEGINS. WITH NOTICE TO THE ADVISORY FACT-FINDER AT THE CONCLUSION OF THE

HEARING, A PARTY MAY SUBMIT A WRITTEN BRIEF TO THE ADVISORY FACT-FINDER WITHIN FIVE DAYS AFTER THE CONCLUSION OF THE HEARING.

(5) WITHIN FIFTEEN DAYS AFTER RECEIPT OF THE LAST WRITTEN BRIEF FROM A PARTY, OR WITHIN FIFTEEN DAYS AFTER THE CONCLUSION OF THE HEARING IF NEITHER PARTY NOTIFIED THE ADVISORY FACT-FINDER OF ITS INTENT TO FILE A WRITTEN BRIEF, THE ADVISORY FACT-FINDER SHALL RENDER A DECISION RECOMMENDING A PEACEFUL AND JUST SETTLEMENT OF THE UNRESOLVED ISSUES BETWEEN THE EXCLUSIVE REPRESENTATIVE AND THE PUBLIC EMPLOYER. THE DECISION SHALL BE LIMITED TO A RECOMMENDATION OF WHICH OF THE FINAL OFFERS MADE BY EACH PARTY ON EACH ISSUE IN DISPUTE SHOULD BE ACCEPTED. THE DECISION SHALL INCLUDE WRITTEN FINDINGS AND A WRITTEN OPINION ON THE ISSUES PRESENTED. THE ADVISORY FACT-FINDER SHALL MAIL OR OTHERWISE DELIVER A COPY OF THE WRITTEN DECISION TO THE EXCLUSIVE REPRESENTATIVE AND THE PUBLIC EMPLOYER.

(6) IN ARRIVING AT A DECISION, THE ADVISORY FACT-FINDER SHALL CONSIDER FACTORS INCLUDING BUT NOT LIMITED TO:

(a) THE INTERESTS AND WELFARE OF THE PUBLIC;

(b) THE COMPENSATION, HOURS, AND TERMS AND CONDITIONS OF EMPLOYMENT OF THE FIREFIGHTERS OR LAW ENFORCEMENT OFFICERS INVOLVED IN THE COLLECTIVE BARGAINING IN COMPARISON WITH THE COMPENSATION, HOURS, AND TERMS AND CONDITIONS OF EMPLOYMENT OF OTHER FIREFIGHTERS OR LAW ENFORCEMENT OFFICERS IN COMPARABLE COMMUNITIES AS DETERMINED BY THE ADVISORY FACT-FINDER;

(c) STIPULATIONS OF THE PARTIES;

(d) THE LAWFUL AUTHORITY OF THE PUBLIC EMPLOYER;

(e) THE FINANCIAL ABILITY OF THE PUBLIC EMPLOYER TO MEET

THE COSTS OF ANY PROPOSED SETTLEMENT;

(f) CHANGES IN THE COST OF LIVING; AND

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

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

(8) THE COST OF THE ADVISORY FACT-FINDER AND RELATED HEARINGS SHALL BE BORNE EQUALLY BY THE EXCLUSIVE REPRESENTATIVE AND THE PUBLIC EMPLOYER.

(9) THE PUBLIC EMPLOYER AND THE EXCLUSIVE REPRESENTATIVE SHALL HAVE TEN DAYS AFTER THE ISSUANCE OF THE ADVISORY FACT-FINDER'S DECISION TO CONSIDER THE RECOMMENDATIONS AND FURTHER NEGOTIATE THE DISPUTED ISSUES. NO LATER THAN THE END OF THE TEN-DAY PERIOD, THE PUBLIC EMPLOYER AND THE EXCLUSIVE REPRESENTATIVE SHALL NOTIFY THE OTHER PARTY WHETHER IT ACCEPTS OR REJECTS THE RECOMMENDATIONS ON EACH OF THE REMAINING UNRESOLVED ISSUES. IF EITHER PARTY REJECTS ANY OF THE RECOMMENDATIONS, THE FINAL OFFERS OF THE PARTIES ON EACH OF THE ISSUES REMAINING UNRESOLVED SHALL BE SUBMITTED AS ALTERNATIVE

SINGLE MEASURES TO A VOTE OF THE QUALIFIED ELECTORS OF THE PUBLIC EMPLOYER AT A SPECIAL ELECTION. THE REGISTERED ELECTORS SHALL SELECT EITHER THE FINAL OFFER OF THE PUBLIC EMPLOYER OR THE FINAL OFFER OF THE EXCLUSIVE REPRESENTATIVE, AS PRESENTED TO THE ADVISORY FACT-FINDER. ISSUES AGREED TO DURING THE TEN-DAY PERIOD SPECIFIED IN THIS SUBSECTION (9) SHALL NOT BE INCLUDED IN THE FINAL OFFERS SUBMITTED TO THE REGISTERED ELECTORS. THE COST OF THE SPECIAL ELECTION SHALL BE BORNE BY WHICHEVER PARTY REFUSES TO ACCEPT THE RECOMMENDATIONS OF THE ADVISORY FACT-FINDER. IF BOTH PARTIES REFUSE TO ACCEPT THE ADVISORY FACT-FINDER'S RECOMMENDATIONS, THE COSTS SHALL BE BORNE EQUALLY BY THE PUBLIC EMPLOYER AND THE EXCLUSIVE REPRESENTATIVE.

(10) NOTHING IN THIS PART 2 SHALL BE CONSTRUED TO PROHIBIT OR OTHERWISE IMPEDE A PUBLIC EMPLOYER AND AN EXCLUSIVE REPRESENTATIVE FROM CONTINUING TO BARGAIN IN GOOD FAITH OR FROM USING THE SERVICES OF A MEDIATOR AT ANY TIME DURING COLLECTIVE BARGAINING. IF AT ANY POINT IN THE ADVISORY FACT-FINDING PROCEEDINGS THE PARTIES ARE ABLE TO CONCLUDE THE DISPUTE, OR ANY PORTION THEREOF, WITH A VOLUNTARILY REACHED AGREEMENT, THE PARTIES SHALL NOTIFY THE ADVISORY FACT-FINDER OF THE AGREEMENT, AND THE ADVISORY FACT-FINDER SHALL TERMINATE THE PROCEEDINGS OR DISCONTINUE THE CONSIDERATION OF AN ISSUE RESOLVED BY THE AGREEMENT. IF AN AGREEMENT IS REACHED AFTER A SPECIAL ELECTION HAS BEEN SCHEDULED AND THE ELECTION CANNOT BE CANCELLED OR ISSUES CANNOT BE REMOVED FROM THE BALLOT, THE VOTES ON THE FINAL OFFERS OF THE PUBLIC EMPLOYER AND THE EXCLUSIVE REPRESENTATIVE SHALL NOT BE COUNTED.

(11) DURING IMPASSE RESOLUTION PROCEEDINGS CONDUCTED PURSUANT TO THIS SECTION, EXISTING COMPENSATION, HOURS, AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT SHALL NOT BE CHANGED EXCEPT BY AN AGREEMENT BETWEEN THE PUBLIC EMPLOYER AND THE EXCLUSIVE REPRESENTATIVE, BUT ANY SUCH AGREEMENT SHALL BE WITHOUT PREJUDICE TO EITHER PARTY'S RIGHTS OR POSITION IN THE ADVISORY FACT-FINDER'S HEARING.

(12) THE PARTIES MAY AGREE TO EXTEND ANY OF THE TIME LIMITS SPECIFIED IN THIS PART 2 EXCEPT THE DATE FOR BEGINNING BARGAINING. THE TIME ALLOWED TO ACCEPT OR REJECT THE RECOMMENDATIONS OF THE ADVISORY FACT-FINDER SHALL NOT BE EXTENDED BEYOND FIFTEEN DAYS BEFORE THE LAST DATE TO CERTIFY THE BALLOT FOR THE SPECIAL ELECTION TO THE DESIGNATED ELECTION OFFICIAL.

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

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

(2) AN EMPLOYEE ORGANIZATION RECOGNIZED BY A PUBLIC EMPLOYER AS THE EXCLUSIVE REPRESENTATIVE FOR A BARGAINING UNIT

AS OF THE EFFECTIVE DATE OF THIS SECTION SHALL REMAIN THE EXCLUSIVE REPRESENTATIVE FOR THE BARGAINING UNIT UNTIL THE EMPLOYEE ORGANIZATION IS DECERTIFIED AS THE EXCLUSIVE REPRESENTATIVE BY VOTE OF A MAJORITY OF THE FIREFIGHTERS OR LAW ENFORCEMENT OFFICERS IN THE BARGAINING UNIT IN ACCORDANCE WITH SECTION 29-5-211.

(3) ALL EXISTING BARGAINING RELATIONSHIPS OF FIREFIGHTERS AND LAW ENFORCEMENT OFFICERS, WHETHER CREATED BY CHARTER, ORDINANCE, RESOLUTION, OR VOLUNTARY RECOGNITION, SHALL REMAIN IN EFFECT UNDER THE TERMS, CONDITIONS, AND PROCEDURES IN EFFECT UNTIL AN ELECTION IS HELD BY PETITION OF THE EXISTING EXCLUSIVE REPRESENTATIVE PURSUANT TO SECTION 29-5-211. IF AN EXCLUSIVE REPRESENTATIVE IS ELECTED FOR A BARGAINING UNIT, THIS PART 2 SHALL APPLY TO THE BARGAINING UNIT NOTWITHSTANDING ANY CHARTER, ORDINANCE, RESOLUTION, OR VOLUNTARY RECOGNITION.

29-5-211. Election of exclusive representative - rules. (1) UPON THE FILING OF A PETITION BY A FIREFIGHTER, LAW ENFORCEMENT OFFICER, GROUP OF FIREFIGHTERS OR LAW ENFORCEMENT OFFICERS, OR EMPLOYEE ORGANIZATION THAT IS SIGNED BY NO LESS THAN THIRTY PERCENT OF THE FIREFIGHTERS OR LAW ENFORCEMENT OFFICERS IN THE BARGAINING UNIT, THE DIRECTOR SHALL CONDUCT AN ELECTION, BY SECRET BALLOT, IN THE BARGAINING UNIT TO CERTIFY AN EMPLOYEE ORGANIZATION AS THE EXCLUSIVE REPRESENTATIVE OF THE BARGAINING UNIT FOR COLLECTIVE BARGAINING OR TO DECERTIFY AN EMPLOYEE ORGANIZATION THAT WAS PREVIOUSLY CERTIFIED OR IS RECOGNIZED BY THE PUBLIC EMPLOYER AS THE EXCLUSIVE REPRESENTATIVE OF THE BARGAINING UNIT.

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

(3) IN A DECERTIFICATION ELECTION, THE EMPLOYEE ORGANIZATION SHALL REMAIN THE EXCLUSIVE REPRESENTATIVE UNLESS A MAJORITY OF THE FIREFIGHTERS OR LAW ENFORCEMENT OFFICERS IN THE BARGAINING UNIT VOTE TO DECERTIFY THE EMPLOYEE ORGANIZATION AS THE EXCLUSIVE REPRESENTATIVE OF THE BARGAINING UNIT.

(4) THE DIRECTOR MAY ADOPT RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., ON THE CONDUCT OF ELECTIONS PURSUANT TO THIS SECTION.

29-5-212. Right to sue. A FIREFIGHTER, LAW ENFORCEMENT OFFICER, OR EMPLOYEE ORGANIZATION MAY ENFORCE ANY PROVISION OF THIS PART 2 BY FILING SUIT IN A DISTRICT COURT IN WHICH VENUE IS PROPER.

SECTION 2. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 4, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.