Ballot Proposal 2 of 2012

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COLLECTIVE BARGAINING

Ballot Proposal 2012-2
November 2012 General Election
Placed on the ballot by Initiative Petition

Complete to 10-17-12

THE CONTENT OF THE BALLOT PROPOSAL:

The following is the official language as it will appear on the ballot.

A PROPOSAL TO AMEND THE STATE CONSTITUTION REGARDING COLLECTIVE BARGAINING

This proposal would:

Grant public and private employees the constitutional right to organize and bargain collectively through labor unions.

Invalidate existing or future state or local laws that limit the ability to join unions and bargain collectively, and to negotiate and enforce collective bargaining agreements, including employees' financial support of their labor unions. Laws may be enacted to prohibit public employees from striking.

Override state laws that regulate hours and conditions of employment to the extent that those laws conflict with collective bargaining agreements.

Define "employer" as a person or entity employing one or more employees.

Should this proposal be approved?

YES __
NO __

BRIEF SUMMARY: A **"Yes"** vote would add Section 28 to Article I and amend Section 5 of Article XI of the State Constitution protecting collective bargaining rights within Michigan and prohibiting existing and future laws from abridging, impairing, or limiting those rights.

A **"No"** vote means that no changes would be made to the Constitution on this issue.

Proposal 2 was put on the ballot through a petition initiative launched by the group Protect Our Jobs, whose website can found at http://protectworkingfamilies.com. The

group Citizens Protecting Michigan's Constitution is opposing the measure and their website is http://handsoffourconstitution.com/.

A DESCRIPTION OF THE PROPOSAL:

The proposal would add a new Section 28 to Article I of the Michigan Constitution. The section would:

- Guarantee the right of workers to *"join, form or assist labor organizations"* and *"bargain collectively with a public or private employer"* regarding wages, hours, and other terms and conditions of employment.
- Prohibit any existing or future state or local law from abridging, impairing, or limiting those rights, except that the State would have the authority to restrict strikes by public employees and establish minimum levels for wages, hours and other terms and conditions of employment.
- Prohibit any existing or future state or local law from impairing, restricting, or limiting the negotiation and enforcement of any collective bargaining agreement with respect to any terms related to the financial support by employees or their collective bargaining representative.

The proposal would also add language to Section 5 of Article XI guaranteeing the rights of state classified civil service employees to collectively bargain with their employer concerning conditions of employment, compensation, hours, working conditions, retirement, pensions, and other aspects of employment with the exception of promotions, which would be determined by competitive examination and performance.

The entire text of the proposed amendment is copied on Page 11 of this analysis.

BACKGROUND INFORMATION:

If adopted, the proposal would significantly alter the legal framework for collective bargaining in Michigan and, subject to the interpretation of Michigan courts, could invalidate any state laws passed by the Legislature that *"abridged, impaired, or limited"* the ability of public sector employees to collectively bargaining on matters such as wages, hours, and other terms of employment. It could also, again depending on court interpretations, overturn numerous laws currently in place that limit the outcomes of public sector collective bargaining agreements and the subjects these agreements can address. Finally, the proposal would effectively block any efforts to enact laws making Michigan a "right-to-work" state with regard to both private and public sector employment. The first two parts of this section review current federal and state laws and state constitutional provisions affecting collective bargaining rights. The last section reviews how the proposal would change the current situation.

Current Law Regarding Private Sector Collective Bargaining

The legal right to collectively bargain in the private sector is largely defined in federal law through the National Labor Relations Act.[1] The act establishes the right of private sector employees to organize and collectively bargain, imposes a mutual obligation on

[1] The text of the NLRA can be accessed from the federal Government Printing Office at this link: http://www.gpo.gov/fdsys/pkg/USCODE-2011-title29/pdf/USCODE-2011-title29-chap7-subchapII.pdf.

employers and labor representatives to bargain in good faith, and defines actions that constitute unfair labor practices on the part of both employers and labor organizations. The act also establishes the National Labor Relations Board (NLRB) and empowers it to prevent unfair labor practices. The NLRB is responsible for hearing and investigating complaints regarding unfair labor practices and issuing orders and other affirmative action to address any unfair labor practices that the board determines occurred based on evidence presented. These orders are subject to review by the federal courts. The NLRB is also responsible for processing petitions related to the designation (or dissolution) of a labor organization as an exclusive representative for a group of employees, including the administration and certification of secret ballot voting by affected employees.

One significant provision of the act makes it an unfair labor practice for an employer to encourage or discourage membership in any labor organization through discrimination with regard to hiring, tenure, or terms and conditions of employment. The act, however, makes one important exception, providing that nothing in law:

> *"shall preclude an employer from making an agreement with a labor organization… to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later."*[2]

Thus, federal law does allow an employer to require membership in a labor organization as long as that requirement is part of a labor agreement reached with that organization. The law goes on to clarify that such membership must be available to any employee "on the same terms and conditions generally applicable to other members" and that membership may not be "denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required" for membership. This type of arrangement, whereby an employer can hire union or non-union workers, but where the worker must join the union in order to retain employment, is often referred to as a "union shop". The U.S. Supreme Court has also upheld the constitutionality of "agency shop" arrangements where an employee is not required to actually join a union, but is required to pay dues and fees to cover the union's costs related to collective bargaining activities, contract administration, and grievance procedures.

The act, however, also gives individual states the authority to enact laws making these types of agreements illegal. The act states:

> *"Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."*[3]

To date, 23 states have enacted laws outlawing "union shop" and/or "agency shop" arrangements, and these laws have become commonly known as "right-to-work" laws.[4]

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[2] 29 U.S.C. § 158(a)(3)
[3] 29 U.S.C. § 164(b)
[4] A map showing the 23 states that have enacted "right-to-work" legislation can be found at http://www.nrtw.org/rtws.htm.

Current Law Regarding Public Sector Collective Bargaining

The National Labor Relations Act does not apply to public sector employers and their employees. For purposes of the act, the definition of "employer" excludes *"the United States or any wholly owned Government corporations… or any State or political subdivision thereof."*[5] So, it sets no framework for labor-management relations and collective bargaining within the public sector. This issue is left to the states.

The authority to determine compensation and benefit levels and regulate conditions of employment for state civil service employees is granted by Article XI, Section 5 of the Constitution to the Civil Service Commission. This section was amended through another ballot proposal in 1978 to authorize collective bargaining for State Police troopers and sergeants. For remaining state civil service employees, collective bargaining rights are subject to the authorization of the Civil Service Commission through its constitutional authority. The commission authorized civil service employees to organize for collective bargaining purposes beginning in 1980, and the collective bargaining process is established through Civil Service Commission rules.[6] State employee unions bargain with an independent Office of the State Employer, and while civil service rules express the commission's intent to *"defer to and approve collective bargaining agreements negotiated in good faith,"* the same rules establish that the Civil Service Commission retains the authority to *"review, modify, or reject, in whole or in part, each proposed collective bargaining agreement."*[7] Like the National Labor Relations Act, civil service rules define unfair labor practices for employers, employees, and labor organizations. Civil service rules also place certain limitations on collective bargaining. For example, they include a list of prohibited subjects of bargaining, limit the maximum term of any agreement to 3 years, and provide for legislative review of approved increases in rates of compensation.

Collective bargaining rights for other public employee groups (e.g. local government, university, K-12 schools) are authorized through the Public Employment Relations Act (PERA).[8] This act largely models the federal National Labor Relations Act in terms of defining unfair labor practices by public employers and public employee labor organizations, providing enforcement processes and remedies to address those practices, authorizing the Michigan Employment Relations Commission to mediate disputes and grievances, and establishing processes through which exclusive employee labor representatives are selected. Like the state civil service rules, the act also specifically lists subjects which are prohibited from consideration during collective bargaining for both public employment in general and specifically for public school employment. It also prohibits strikes by public employees and lockouts by public school employers.

Impact of the Proposal on Current Laws

Adoption of the proposal would significantly alter the current regulatory structure for collective bargaining in Michigan. The impacts on private sector collective bargaining

[5] 29 U.S.C. § 152(2)

[6] For more background on state collective bargaining, see House Fiscal Agency, *Civil Service Salary and Benefit Comparisons*, available on-line at http://www.house.mi.gov/hfa/PDFs/civil%20service%20comparisons%2008.pdf.

[7] Michigan Civil Service Rule 6-2.1(c) available at http://www.michigan.gov/documents/mdcs/Michigan_Civil_Service_Commission_Rules_347183_7.pdf.

[8] The text of the Public Employment Relations Act (1965 PA 379) can be found at this link: http://legislature.mi.gov/doc.aspx?mcl-Act-336-of-1947.

would be more limited and are focused on the proposal's effect on the potential for "right-to-work" legislation. However, the proposal would have very significant impacts on the framework of collective bargaining within the public sector.

Article XI, Section 5 - State Civil Service Employees

New language in this section would grant classified state civil service employees the right to collectively bargain with their employer on issues including conditions of employment, compensation, hours, working conditions, retirement, pensions, and other aspects of their employment with the exception of promotions. As discussed above, collective bargaining rights for state civil service employees are currently subject to authorization by the Civil Service Commission. The proposal would appear to remove the commission's authority to eliminate or restrict collective bargaining in the future. What is less clear is the extent to which the Civil Service Commission would continue to have the authority to review, approve, reject, and modify labor agreements that result from collective bargaining. While the Commission retains its constitutional authority with regard to civil service compensation, it would eventually be up to the courts to decide how this authority is balanced against the new language guaranteeing collective bargaining rights to civil service employees.

Article I, Section 28 - General Collective Bargaining Rights

The proposal also adds this section which, in subsection (1), guarantees to all Michigan citizens the right *"to organize together to form, join or assist labor organizations, and to bargain collectively with a public or private employer… to the fullest extent not preempted by the laws of the United States."* The amendment defines employer as *"a person or entity employing one or more employees"* and employee as *"a person who works for any employer for compensation."* Thus, the language would apply to virtually any employment situation. Subsection (2) then provides that collective bargaining is a *"mutual obligation of the employer and the exclusive representative of the employees to negotiate in good faith"* and *"to execute and comply with any agreement reached."* The language, however, allows that the obligation *"does not compel either party to agree to a proposal or make a concession."*

These subsections have two significant impacts. Similar to the new language in Article XI, Section 5 covering state civil service employees, this language constitutionally protects collective bargaining rights for all other public sector employees. Since private sector collective bargaining is subject to the provisions of the federal National Labor Relations Act, these protections would not have a significant impact on bargaining rights within the private sector. However, the language affirming the rights of workers to organize and collectively bargain "to the fullest extent not preempted by the laws of the United States" would have both public and private sector ramifications. This language would appear to nullify any type of "right-to-work" legislation that might be considered by the Legislature in the future. This would guarantee the continued legality of "union shop" and "agency shop" arrangements agreed to by employers and labor organizations within collective bargaining agreements.

The most significant language of the proposal appears in subsection (3) of Section 28. The subsection provides that no existing or future law shall *"abridge, impair or limit"* collective bargaining rights with the exception that the State *"may prohibit or restrict strikes by the employees of the State and its political subdivisions."* In addition, the

subsection appears to reference the Legislature's constitutional authority in Article IV, Section 49 to enact laws relative to hours and conditions of employment, by adding that this authority shall also not *"abridge, impair or limit the right to collective bargain for wage, hours, and other terms or conditions of employment that exceed minimum levels established by the legislature."*

The language is very broad in scope and could be interpreted to eliminate any role for state and local governments in enacting laws regarding public sector collective bargaining in terms of defining or limiting employee compensation and benefit levels (e.g., health care, retirement and pension benefits), or defining subject matters that can or cannot be part of collective bargaining discussions. The PERA itself would seem to be in conflict with this ballot language, and it is very likely that the actual impact of the new language will only be determined through litigation and review by the Michigan courts.[9] A short list of recently enacted legislation that could be construed as conflicting with this new language appears in the "Fiscal Impact" section of the analysis.

Similar language in subsection (4) of the new Section 28 prohibiting laws that restrict or limit the ability of collective bargaining agreements to include provisions related to financial support by employees of their collective bargaining representative would appear to invalidate current law restrictions on the use of payroll deductions by public employers to collect union dues and fees. For instance, Public Act 53 of 2012 prohibits public school employers from using public school resources for this purpose. Adoption of the proposal would likely invalidate such laws and allow this matter to be an open subject the collective bargaining process.

FISCAL IMPACT:

The fiscal implications of the proposal are difficult to project as they largely depend on two unknowns:

- The extent to which Michigan courts will determine that the proposed language invalidates existing laws that "abridge, impair or limit" collective bargaining.
- The extent to which future collective bargaining agreements will be reached that fall outside current legal restrictions once any laws are overturned.

To the extent that Michigan courts determine that the new provisions invalidate existing state laws or similar local ordinances that are deemed to restrict collective bargaining, the proposal could result in significant personnel cost increases at both the state and local levels. However, increased costs would only occur if labor agreements were subsequently reached between public employers and public employee unions that would not have been possible under the limitations of current law. For instance, if the proposal is adopted and the courts determine that recently enacted legislation limiting public employer contributions to employee health care plans is now unconstitutional, public sector costs would increase only to the extent that subsequent collective bargaining agreements include provisions that require employer contributions that exceed the current restrictions.

[9] For a fuller discussion of the uncertainty surrounding the language, see the Citizens Research Council report on the proposal available at http://www.crcmich.org/PUBLICAT/2010s/2012/memo1117.pdf.

Furthermore, the amount of the true cost increase will also depend on how agreements on any specific matter affected by the proposal affect other bargaining table issues. Again using the example of employee health care, collective bargaining may result in public employer contributions that exceed the limits established in current law if the proposal is adopted, and this would increase public employer costs. However, if the increased employer contribution is secured through an employee concession in another area (e.g., smaller wage increase), that concession will generate offsetting savings to some degree. The actual net cost increase to the public employer would be the cost of their health care contributions above current limits minus savings achieved through any related concessions.

With those caveats, outlined below is a list of recently enacted state laws that could be construed as limiting collective bargaining rights in some manner and that also have significant fiscal implications. If the proposal is adopted and these laws are challenged, it would be up Michigan courts to determine whether the laws remained constitutional under the ballot language. The examples serve to illustrate the potential fiscal impacts of the proposal and are not a comprehensive list of all laws that could be affected.

Public Act 152 of 2011 - Public Employer Health Care Contributions (Senate Bill 7)

Enacted last fall, the new act limits the contributions of public employers toward employee health benefit plans. Public employers guided by PERA (i.e., local governments, K-12 schools) have to comply with either a hard cap requirement on contributions or pay no more than 80% of the total annual costs of employee medical benefit plans.[10] Local units of government are allowed to exempt themselves from this requirement by a two-thirds vote of their governing bodies. Recent news accounts suggest that total health care benefit costs for K-12 school districts statewide are around $2.2 billion annually,[11] so the allocation of these costs between public school employers and employees is a significant fiscal issue.

Public Act 264 of 2011 - Michigan State Employees Retirement System revisions (House Bill 4701)

The acts made significant changes to the retirement system for state employees. A key provision was requiring participant employees to either (a) contribute 4% of their compensation toward the pension plan; or (b) freeze their current pension benefits and transfer to a defined contribution plan for future years of service. In addition, existing retiree health care benefits were also eliminated for new hires after January 1, 2012 and replaced with matching employer contributions of up to 2% into a 401(k)/457 account. Short-run savings for the State from the increased employee contributions could be as high as $56 million gross ($28 million GF/GP) annually, although savings will diminish over time as the proportion of state employees covered by the pension system decreased. Additional savings related to the retiree health care changes will be realized in the long run.

[10] The act applies to all public employers. However, the Constitution grants authority to determine compensation for state civil service employees to the Civil Service Commission and grants operational autonomy to public universities. So, the act will not apply to these entities without further amendments to the Constitution.

[11] For instance, see http://www.mlive.com/education/index.ssf/2012/10/teachers_dispute_projected_400.html.

Public Act 103 of 2011 - Restrictions on Collective Bargaining Topics (House Bill 4628)

The act was part of a legislative bill package which sought to reform laws related to teacher tenure and evaluation practices for K-12 school teachers. This specific act added six additional subjects to the PERA that would be prohibited from consideration in collective bargaining agreements, including teacher placement; personnel decisions during a reduction in force, a recall, or when hiring; performance evaluation systems; the discharge or discipline of employees; classroom observation policies during evaluations; and the method of performance-based compensation. The proposal's language could allow these matters (and other matters that were already part of current law) to be considered again as part of collective bargaining, which would have both fiscal and policy implications.

Public Acts 4 and 9 of 2011 - Emergency Managers and Collective Bargaining (House Bill 4214 and Senate Bill 158)

The new laws make significant revisions to the existing statutes on the role of emergency financial managers (EFMs) in addressing local governments and school districts facing financial emergencies and placed in receivership. From the standpoint of collective bargaining, the revisions allow EFMs to abrogate collective bargaining agreements under certain circumstances and suspend collective bargaining for up to 5 years in local governments placed in receivership. It should be noted that Public Act 4 is currently suspended pending the outcome of Ballot Proposal 2012-1, which is a referendum on that act.[12]

Public Act 54 of 2011 - Wage and Benefit Freezes (House Bill 4152)

The act freezes wage and benefit levels of unionized public employees during the time between the expiration of a labor contract and the effective date of a successor contract. The freeze would include scheduled wage step increases and any increased costs of insurance benefits. It also prohibits arbitration panels or subsequent collective bargaining agreements from including retroactive payments to cover these amounts. Legislative committee testimony from one school district suggested that the district incurred $1.7 million in added costs during its last round of labor negotiations due these types of cost increases that occurred after the expiration of the prior contract.[13]

ARGUMENTS MADE BY PROPONENTS:

** Supporters say the Constitutional amendment is needed to preserve and protect collective bargaining rights for Michigan workers. They point to recently enacted legislation that infringes on public-sector collective bargaining rights, such as mandates on employee-paid health care premiums, changes to teacher tenure laws that remove certain matters from consideration during collective bargaining, and the ability of emergency financial managers to modify or cancel collectively bargained labor contracts. Proponents assert that these issues should be settled at the bargaining table, not through

[12] A House Fiscal Agency analysis of Proposal 2012-1 is available at http://house.mi.gov/hfa/PDFs/ballot%20proposal%202012-1.pdf.

[13] Testimony from Dr. Thomas Moline, Superintendent of Royal Oak School District to House Education Committee, February 23, 2011, available at http://house.mi.gov/SessionDocs/2011-2012/Testimony/Committee5-2-23-2011-2.pdf.

state statute, especially since some of these issues have been included in contracts only after concessions have been granted by union workers in other areas of the contract.

** Proponents of the proposal assert that collective bargaining rights benefit both unionized and non-unionized workers alike.[14] They claim that organized labor and collective bargaining rights result in establishment of pay and benefit standards that are followed by both union and non-union employers. They also say unions help reduce wage inequality in the economy and promote worker participation and worker-management cooperation that can benefit both workers and the firm. As such, they contend that the right to organize and collectively bargain deserves constitutional protection.

** Proposal supporters argue the amendment is needed to prohibit any future efforts to enact "right-to-work" legislation in Michigan. They contend there was a reason that Congress authorized the existence of "union shop" and "agency shop" agreements. Without them, labor organizations are forced to battle what economists call the "free rider" problem. Current laws require any labor organization to faithfully represent all represented employees, whether they are union members or non-union members. Purely based on self-interest, an employee in a "right-to-work" state would have an incentive to avoid any financial support of a union (regardless of the reason) since he or she would still reap the benefits of wage or benefit enhancements achieved through collective bargaining. However, if a sufficient numbers of employees acted in the same manner, the labor organization would eventually not have sufficient revenue to function, and the benefits of collective bargaining to the group as a whole would cease. Some proponents of the proposal contend the real goal of "right-to-work" laws is not to protect individual rights, but to weaken collective bargaining rights for labor as a whole.

ARGUMENTS MADE BY OPPONENTS:

**** Critics assert that the proposal does much more than simply protect collective bargaining rights. They contend adoption of the proposal is too broad in scope and will result in the overturning of numerous reforms meant to contain the costs of state and local government – laws that were enacted by the democratically-elected State Legislature. Personnel costs make up significant shares of the costs of state and local government and of school and university expenditures. These opponents say the Legislature must be afforded a role in containing these costs so that public sector expenditures remain within current revenues. They assert that recently enacted legislation such as the acts limiting public employer health care contributions and granting additional powers to emergency financial managers are examples of reforms needed to achieve this goal. They should not be repealed through a single, non-specific constitutional amendment

** Opponents contend that, while collective bargaining may benefit certain union members, it has detrimental effects elsewhere and thus should not be granted a special status in the State Constitution.[15] They assert that by bidding up wages and compensation in the unionized industry, collective bargaining results in higher prices to

[14] For an overview of these arguments, see http://www.epi.org/publication/briefingpapers_bp143/.
[15] For a discussion of this viewpoint, see http://www.heritage.org/research/reports/2009/05/what-unions-do-how-labor-unions-affect-jobs-and-the-economy.

consumers and reduced profitability and investment for unionized firms. These higher labor costs also constrain overall employment in that industry, which they say may be good for existing union members but bad for those who miss out on employment opportunities that would have otherwise existed. Workers unable to secure jobs in the unionized industry then have to seek employment elsewhere, and this increased supply of labor reduces wages in non-unionized sectors of the economy.

****** Supporters of enacting "right-to-work" legislation in Michigan oppose the measure because they believe the amendment would unfairly tie the hands of the Michigan Legislature in considering this issue. Congress has given the States the authority to prohibit "union shop" and "agency shop" arrangements in collective bargaining agreements, and they contend Michigan should follow the path of 23 other states that have enacted such laws, which protect an individual worker from being compelled to either join a labor union or financially support such a union in order to maintain their jobs.

Fiscal Analyst: Bob Schneider

■ This analysis was prepared by nonpartisan House staff for use by House members and the general public in their deliberations, and does not constitute an official statement of the intent of the proposal.

Initiative Petition
Amendment to the Constitution

Full Text of Proposal

A proposal to amend the State Constitution regarding collective bargaining. (Proposal provided under an initiative petition filed with the Secretary of State on June 13, 2012.)

The proposal would add a new §28 to Article 1, of the State Constitution and amend existing §5 of Article 11 to read as follows:

Sec. 28. (1) The people shall have the rights to organize together to form, join or assist labor organizations, and to bargain collectively with a public or private employer through an exclusive representative of the employees' choosing, to the fullest extent not preempted by the laws of the United States.

(2) As used in subsection (1), to bargain collectively is to perform the mutual obligation of the employer and the exclusive representative of the employees to negotiate in good faith regarding wages, hours, and other terms and conditions of employment, and to execute and comply with any agreement reached; but this obligation does not compel either party to agree to a proposal or make a concession.

(3) No existing or future law of the state or its political subdivisions shall abridge, impair or limit the foregoing rights; provided that the state may prohibit or restrict strikes by employees of the state and its political subdivisions. The legislature's exercise of its power to enact laws relative to the hours and conditions of employment shall not abridge, impair or limit the right to collectively bargain for wages, hours, and other terms and conditions of employment that exceed minimum levels established by the legislature.

(4) No existing or future law of the state or its political subdivisions shall impair, restrict or limit the negotiation and enforcement of any collectively bargained agreement with a public or private employer respecting financial support by employees of their collective bargaining representative according to the terms of that agreement.

(5) For purposes of this section, "employee" means a person who works for any employer for compensation, and "employer" means a person or entity employing one or more employees.

(6) This section and each part thereof shall be self-executing. If any part of this section is found to be in conflict with or preempted by the United States Constitution or federal law, such part shall be severable from the remainder of this section, and such part and the remainder of this section shall be effective to the fullest extent that the United States Constitution and federal law permit.

(The proposal would also amend §5 of Article 11 of the State Constitution. The proposed addition to §5 of Article 11 is indicated in italics [new language in ***BOLD FACE CAPITAL LETTERS***].)

Sec. 5. The classified state civil service shall consist of all positions in the state service except those filled by popular election, heads of principal departments, members of boards and

commissions, the principal executive officer of boards and commissions heading principal departments, employees of courts of record, employees of the legislature, employees of the state institutions of higher education, all persons in the armed forces of the state, eight exempt positions in the office of the governor, and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making. The civil service commission may exempt three additional positions of a policy-making nature within each principal department.

The civil service commission shall be non-salaried and shall consist of four persons, not more than two of whom shall be members of the same political party, appointed by the governor for terms of eight years, no two of which shall expire in the same year.

The administration of the commission's powers shall be vested in a state personnel director who shall be a member of the classified service and who shall be responsible to and selected by the commission after open competitive examination.

The commission shall classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.

CLASSIFIED STATE CIVIL SERVICE EMPLOYEES SHALL, THROUGH THEIR EXCLUSIVE REPRESENTATIVE, HAVE THE RIGHT TO BARGAIN COLLECTIVELY WITH THEIR EMPLOYER CONCERNING CONDITIONS OF THEIR EMPLOYMENT, COMPENSATION, HOURS, WORKING CONDITIONS, RETIREMENT, PENSIONS, AND OTHER ASPECTS OF EMPLOYMENT EXCEPT PROMOTIONS, WHICH WILL BE DETERMINED BY COMPETITIVE EXAMINATION AND PERFORMANCE ON THE BASIS OF MERIT, EFFICIENCY, AND FITNESS.

State Police Troopers and Sergeants shall, through their elected representative designated by 50% of such troopers and sergeants, have the right to bargain collectively with their employer concerning conditions of their employment, compensation, hours, working conditions, retirement, pensions, and other aspects of employment except promotions which will be determined by competitive examination and performance on the basis of merit, efficiency and fitness; and they shall have the right 30 days after commencement of such bargaining to submit any unresolved disputes to binding arbitration for the resolution thereof the same as now provided by law for Public Police and Fire Departments.

No person shall be appointed to or promoted in the classified service who has not been certified by the commission as qualified for such appointment or promotion. No appointments, promotions, demotions or removals in the classified service shall be made for religious, racial or partisan considerations.

Increases in rates of compensation authorized by the commission may be effective only at the start of a fiscal year and shall require prior notice to the governor, who shall transmit such increases to the legislature as part of his budget. The legislature may, by a majority vote of the members elected to and serving in each house, waive the notice and permit increases in rates of

compensation to be effective at a time other than the start of a fiscal year. Within 60 calendar days following such transmission, the legislature may, by a two-thirds vote of the members elected to and serving in each house, reject or reduce increases in rates of compensation authorized by the commission. Any reduction ordered by the legislature shall apply uniformly to all classes of employees affected by the increases and shall not adjust pay differentials already established by the civil service commission. The legislature may not reduce rates of compensation below those in effect at the time of the transmission of increases authorized by the commission.

The appointing authorities may create or abolish positions for reasons of administrative efficiency without the approval of the commission. Positions shall not be created nor abolished except for reasons of administrative efficiency. Any employee considering himself aggrieved by the abolition or creation of a position shall have a right of appeal to the commission through established grievance procedures.

The civil service commission shall recommend to the governor and to the legislature rates of compensation for all appointed positions within the executive department not a part of the classified service.

To enable the commission to exercise its powers, the legislature shall appropriate to the commission for the ensuing fiscal year a sum not less than one percent of the aggregate payroll of the classified service for the preceding fiscal year, as certified by the commission. Within six months after the conclusion of each fiscal year the commission shall return to the state treasury all moneys unexpended for that fiscal year.

The commission shall furnish reports of expenditures, at least annually, to the governor and the legislature and shall be subject to annual audit as provided by law.

No payment for personal services shall be made or authorized until the provisions of this constitution pertaining to civil service have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.