

# HOUSE . . . . . No. 4244

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## The Commonwealth of Massachusetts

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EXECUTIVE DEPARTMENT  
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DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

September 13, 2007.

To the Honorable Senate and House of Representatives:

Pursuant to Article LXXXVII of the Amendments to the Constitution, I am filing for your consideration the attached legislative proposal, entitled “An Act Increasing the Efficiency, Effectiveness, and Fairness of the Commonwealth’s Labor Relations Agencies.”

The legislation restructures and consolidates the Labor Relations Commission, Board of Conciliation and Arbitration, and Joint Labor-Management Committee into a new Division of Labor Relations located within the Department of Labor.

The legislation has three principal purposes:—

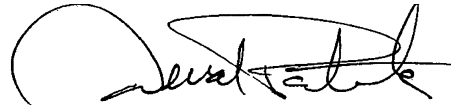
- (1) to maximize the efficient use of existing labor relations resources;
- (2) to professionalize the management of those resources; and
- (3) to protect adjudicatory independence.

Under the current system, efficiency is impeded by having three separate agencies with overlapping functions, duplicative costs, and staffs that cannot be redirected across agency lines to handle shifting demands. Administrative operations are overseen by commissioners whose expertise lies in adjudication, not management. Finally, there has been no objective method for appointing commissioners, resulting in a politicization of the process. The result has been a significant backlog in cases and diminished credibility in the resolution of those cases.

The legislation addresses these problems by consolidating the staff of the existing agencies, thus increasing the flexibility to target resources where they are needed, while eliminating duplication of effort and costs. The staff will be managed by a professional administrator, which will free up the adjudicators to focus on what they do best:— adjudicating. The appointment process will be depoliticized by empowering an advisory council to solicit and nominate qualified candidates for consideration. Finally, the legislation safeguards the autonomy and independence of the agency in performing its adjudicatory functions.

I urge your prompt and favorable consideration of this bill to increase the effectiveness and fairness of the Commonwealth's labor relations agencies.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Deval Patrick', with a large, stylized flourish on the left side.

Deval L. Patrick,  
*Governor.*

**The Commonwealth of Massachusetts**

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In the Year Two Thousand and Seven.

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AN ACT INCREASING THE EFFICIENCY, EFFECTIVENESS, AND FAIRNESS OF  
THE COMMONWEALTH'S LABOR RELATIONS AGENCIES.

*Be it enacted by the Senate and House of Representatives in General  
Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Sections 17D and 17E of Chapter 6A of the  
2 General Laws are hereby repealed.

1 SECTION 2. Subsection (c) of Section 1A of Chapter 23 of the  
2 General Laws, as appearing in Section 15 of Chapter 19 of the  
3 acts of 2007, is hereby amended by striking out the words “the  
4 division of conciliation and arbitration, the labor relations com-  
5 mission, the joint labor-management committee” and inserting in  
6 place thereof the following words:— the division of labor rela-  
7 tions.

1 SECTION 3. Section 3 of Chapter 23, as appearing in the 2006  
2 Official Edition, is hereby amended by striking out subsection (a)  
3 and inserting in place thereof the following section:—  
4 (a) Within the department, there shall be the following agencies  
5 and divisions:— the division of industrial accidents, the division  
6 of labor relations, and the division of occupational safety.

1 SECTION 4. Subsection (c) of Section 3 of Chapter 23 is  
2 hereby repealed.

1 SECTION 5. Chapter 23 is further amended by striking out  
2 Sections 9O, 9P, 9Q and 9R and inserting in place thereof the  
3 following 7 sections:—

4 Section 9O. There shall be within the department of labor a  
5 division of labor relations, in this and the following 6 sections  
6 called the “division,” which shall be administered by a director,

7 who shall be appointed by the governor. The division shall  
8 include:—

9 (1) a dispute resolution office;

10 (2) an advisory council;

11 (3) the Commonwealth employment relations board; and

12 (4) the joint labor-management committee. The division and its  
13 staff shall be subject to the jurisdiction of the department of labor  
14 for all administrative functions, but shall not be subject to the  
15 department of labor in the performance of adjudicatory functions,  
16 including but not limited to the assignment, evaluation, hiring,  
17 and firing of individual adjudicatory personnel.

18 It is hereby declared to be the public policy of the Common-  
19 wealth that the best interests of the people of the state are served  
20 by the prevention or prompt settlement of labor disputes; and it  
21 shall be the responsibility and objective of the division to take  
22 such steps as will most effectively and expeditiously encourage  
23 the parties to a labor dispute to agree on the terms of a settlement  
24 or to agree on the method and procedure which shall be used to  
25 resolve a dispute.

26 It is recognized that a constructive and harmonious long-term  
27 collective bargaining relationship is the most positive way to  
28 avoid labor disputes, and such a relationship can be effectively  
29 developed in the public sector through the use of joint labor man-  
30 agement committees.

31 Section 9P. The dispute resolution office shall consist of  
32 hearing officers, mediators, arbitrators, investigators, and other  
33 skilled professionals who shall attempt, through the use of pre-  
34 hearing investigative conferences, expedited hearings, mediation,  
35 deferral to arbitration, and other dispute resolution procedures, to  
36 resolve any labor dispute brought to the attention of the division.  
37 Such staff may be assigned to investigate labor disputes pursuant  
38 to Section 11 of Chapter 150E, to mediate labor disputes pursuant  
39 to Section 9 of Chapter 150E, to assist the joint labor-management  
40 committee in the investigation of disputes involving municipal  
41 police and fire departments, and to perform such other duties as  
42 the division may require.

43 Section 9Q. (a) There shall be an advisory council to advise the  
44 division concerning policies, practices, and specific actions that  
45 the division might implement to better discharge its labor relations

46 duties. The director shall provide for the council suitable meeting  
47 space and such clerical and other assistance as the director and the  
48 council may deem necessary.

49 (b) The advisory council shall consist of 13 members to be  
50 appointed by the governor, 5 of whom shall be members or repre-  
51 sentatives of public sector labor unions, 5 of whom shall be repre-  
52 sentatives of public sector managers, including the director of  
53 employee relations for the Commonwealth, and 3 of whom shall  
54 be at large members. Seven members shall constitute a quorum for  
55 purposes of holding a meeting and voting. No action shall be  
56 taken by the council without the affirmative vote of at least 7  
57 members. All members of the advisory council shall serve without  
58 compensation and at the pleasure of the governor. The advisory  
59 council shall meet no less than quarterly during each calendar  
60 year. Meetings of the advisory council shall be called by the chair  
61 or upon petition by a majority of voting members. Such meetings  
62 shall be subject to Section 11A 1/2 of Chapter 30A. The director  
63 of labor, the chair of the Commonwealth employment relations  
64 board, and the director of the division shall serve as ex-officio  
65 non-voting members of the advisory council.

66 (c) The governor shall, from time to time, designate one of the  
67 council members as chair of the advisory council. The chair shall  
68 serve for no more than 2 years, and the position shall rotate  
69 among employee, employer, and at large members. No member of  
70 the advisory council shall be subject to Chapter 31.

71 (d) With the approval of the advisory council, the director of  
72 labor may establish standards regarding the performance of the  
73 division, and require periodic reports from the director of the divi-  
74 sion regarding the division's attainment of such standards.

75 Section 9R. (a) There shall be in the division of labor relations  
76 a Commonwealth employment relations board, in this and the  
77 following 5 sections called the "board," consisting of 3 members  
78 to be appointed by the governor. The board shall in no respect be  
79 subject to the jurisdiction of the department of labor except to the  
80 extent of compliance with reasonable requests from the director  
81 for the sharing of information which does not interfere with the  
82 efficient and independent functioning of the board. Each member  
83 of the board shall be appointed for a term of 5 years; provided,  
84 however, that a term of appointment shall be shortened, if

85 necessary, to ensure that the members' terms are staggered such  
86 that a term expires every 2 years. Any vacancy in the board shall  
87 be filled by appointment in like manner. No more than 2 members  
88 shall be from the same political party. Upon the expiration of the  
89 term of any member, her successor shall be appointed in like  
90 manner. Any member may be removed by the governor for neglect  
91 of duty or malfeasance in office, but for no other cause. (b)The  
92 governor shall designate one of the members of the board as chair.  
93 The chair shall be responsible for convening meetings of the  
94 board. The position of chair shall be classified in accordance with  
95 Section 45 of Chapter 30 and the chair's salary shall be deter-  
96 mined in accordance with Section 46C of said Chapter 30. The  
97 chair shall devote her full time to the duties of her office and shall  
98 not engage in other employment or business activities during reg-  
99 ular business hours.

100 (c) The board members other than the chair shall serve on a per  
101 diem basis, to be reimbursed at an appropriate rate to be estab-  
102 lished by the director, in consultation with the advisory council.  
103 The board members shall hold no other public office or public  
104 employment in the Commonwealth, and shall devote whatever  
105 time is necessary to fulfill the obligations of their positions.

106 (d) Pursuant to Section 11 of Chapter 150E, the members shall  
107 be responsible for reviewing orders and issuing decisions.

108 (e) A vacancy in the board shall not impair the right of the  
109 remaining members to exercise all the powers of the board, and 2  
110 members of the board shall at all times constitute a quorum. The  
111 board shall have an official seal which shall be judicially noticed.

112 (f) The appointment or reappointment of a member shall be  
113 made by the governor from names submitted to the governor by  
114 the advisory council. Before any appointment or reappointment to  
115 the position of member of the Commonwealth employment rela-  
116 tions board, the advisory council shall review all applications for  
117 such nominations and consider the following factors:—

118 (1) basic understanding of the Commonwealth's public sector  
119 labor relations law;

120 (2) skills in decision-making;

121 (3) a law degree; and

122 (4) demonstrated familiarity with legal processes. The advisory  
123 council shall rank each candidate as qualified, unqualified, or

124 highly qualified. The governor may select 1 or more candidates  
125 recommended by the advisory council; provided, however, that  
126 the governor may decline to appoint any of the proffered candi-  
127 dates, in which case the council shall reopen the application  
128 process and submit new candidates for the governor's considera-  
129 tion.

130 (g) Attorneys employed by the division may appear for and rep-  
131 resent the board in any case in court.

132 Section 9S. There shall be within the division the joint labor-  
133 management committee as established by Chapter 1078 of the acts  
134 of 1973, and as most recently amended by Chapter 589 of the acts  
135 of 1987.

136 Section 9T. (a) The division shall be administered by a director,  
137 who shall be appointed by the governor to serve for a term coter-  
138 minous with that of the governor. The position of director shall be  
139 classified in accordance with Section 45 of Chapter 30 and the  
140 salary shall be determined in accordance with Section 46C of said  
141 Chapter 30. The director shall devote her full time to the duties of  
142 her office and shall not engage in other employment or business  
143 activities during regular business hours.

144 (b) The appointment or reappointment of the director of the  
145 division shall be made by the governor from names submitted to  
146 the governor by the advisory council. Before any appointment or  
147 reappointment to the position of director of the division, the advi-  
148 sory council shall review all applications for such nominations  
149 and consider the following factors:—

150 (1) basic understanding of the Commonwealth's public sector  
151 labor relations law; (2) skills and experience in managing organi-  
152 zations; and

153 (3) any other relevant experience and education. The advisory  
154 council shall rank each candidate as qualified, unqualified, or  
155 highly qualified. The governor may select 1 of the candidates rec-  
156 ommended by the advisory council; provided, however, that the  
157 governor may decline to appoint any of the proffered candidates,  
158 in which case the council shall reopen the application process and  
159 submit new candidates for the governor's consideration. Any  
160 director may be removed by the governor for neglect of duty or  
161 malfeasance in office, or for the division's failure to meet the

162 performance standards as set forth in subsection (d) of Section  
163 9Q, but for no other cause.

164 (c) The director shall be the executive and administrative head  
165 of the division and shall have charge of the administration of the  
166 division. The director shall have the authority, pursuant to Chapter  
167 30A, and after consultation with the advisory council and the  
168 members of the Commonwealth employment relations board, to  
169 issue any regulation for the enforcement and administration of the  
170 provisions of this section and the 3 following sections, as well as  
171 Chapters 150, 150A, and 150E. The director shall prepare an  
172 annual operating budget and other funding requirements and  
173 requests pursuant to this chapter to be submitted to the executive  
174 office of labor and workforce development.

175 (d) In addition to the responsibilities specified above, the direc-  
176 tor's duties shall include, but not be limited to, the following:—

177 (i) the training of newly appointed board members, hearing  
178 officers, mediators, arbitrators, investigators, and any other staff  
179 as to their responsibilities and powers, including, but not limited  
180 to:— the conduct of investigations, conferences, hearings, and  
181 mediations; the prompt, clear, and concise writing of decisions;  
182 and the prompt resolution of labor disputes brought to the atten-  
183 tion of the division;

184 (ii) the establishment of an annual training program to instruct  
185 all board members, hearing officers, mediators, arbitrators, inves-  
186 tigators, and any other staff as the director deems appropriate, in  
187 matters related to their professional development;

188 (iii) the establishment of reasonable criteria, in conjunction  
189 with the general counsel, and after consultation with the advisory  
190 council, upon which to perform an annual review of each board  
191 member;

192 (iv) the establishment of performance standards for all of the  
193 functions of the division;

194 (v) the appropriate allocation of all disputes brought to the  
195 attention of the division, to ensure that all professional staff  
196 receive balanced and equitable case loads; and

197 (vi) the hiring, supervision, and evaluation of hearing officers,  
198 mediators, arbitrators, investigators, and other staff, for the pur-  
199 pose of fostering more effective resolution of disputes brought to  
200 the attention of the division.

201 (e) While the director shall have oversight over the perfor-  
202 mance of hearing officers, arbitrators, and other staff, neither the  
203 director nor any other person may interfere with, influence, or  
204 overrule any written opinion issued by the division's staff or by  
205 the board. Any such decision may only be overruled by the mem-  
206 bers of the Commonwealth employment relations board or a court,  
207 in accordance with applicable law.

208 Section 9U. The division shall, within 120 days of the close of  
209 each fiscal year, make a detailed report in writing to the general  
210 court, including without limitation:— the number and types of  
211 cases filed with the division, including elections, and the disposi-  
212 tion of all such cases; statistics regarding the number of decisions  
213 it has rendered and unresolved cases, and the timeliness of the  
214 division's decisions; the names, salaries, and duties of all  
215 employees and officers in the employ or under the supervision of  
216 the division; and an account of all moneys it has disbursed.

1 SECTION 6. Chapter 23C of the General Laws is hereby  
2 repealed.

1 SECTION 7. Chapter 150E of the General Laws is hereby  
2 amended by striking out Section 11 and inserting in place thereof  
3 the following section:—

4 Section 11. (a) When a complaint is made to the division that a  
5 practice prohibited by Section 10 has been committed, the director  
6 may refer the matter to an investigator. The employer, the  
7 employee organization, or the person so complained of shall have  
8 the right to file an answer to the original or amended complaint  
9 within 5 days after the service of such complaint or within such  
10 other time as the division may require. Before the receipt of any  
11 answer, any complaint may be amended as of right, and, after the  
12 receipt of any answer, only with the permission of the division.

13 (b) The investigator may issue an order dismissing the com-  
14 plaint, deferring any complaint which is the subject of a pending  
15 grievance or arbitration, referring any complaint to one of the  
16 division's mediators, or directing that a hearing take place. Unless  
17 the complaint is dismissed, deferred, or referred, the investigator  
18 shall promptly meet with the parties, investigate whether settle-  
19 ment of the complaint is possible, clarify and narrow the issues

20 before the complaint is forwarded to a hearing, or dismiss the  
21 complaint without a hearing. The investigator may dismiss the  
22 complaint if she finds no probable cause to believe that a violation  
23 of this chapter has occurred or if she otherwise determines that  
24 further proceedings would not effectuate the purposes of this  
25 chapter.

26 (c) If a hearing is ordered, the division shall set the time and  
27 place for the hearing, which time and place may be changed by  
28 the division at the request of one of the parties for cause shown.  
29 Any party may file a motion to dismiss the complaint or for a  
30 summary decision prior to a hearing. At the hearing, which shall  
31 be presided over by a hearing officer, the employer, the employee  
32 organization, or the person so complained of shall have the right  
33 to appear in person or otherwise to defend against the complaint.  
34 At the discretion of the division, any person may be allowed to  
35 intervene in such proceeding. In any hearing, the division shall  
36 not be bound by the technical rules of evidence prevailing in the  
37 courts. The testimony, if any, may be preserved by a taped  
38 recording or, at the discretion of the parties who shall be respon-  
39 sible for the costs thereof, by stenographic transcription.

40 (d) At the conclusion of the hearing, the hearing officer shall  
41 issue written findings of fact and shall determine whether a prac-  
42 tice prohibited under Section 10 has been committed and, if so,  
43 shall issue an order requiring the charged party to cease and desist  
44 from such prohibited practice, and shall take such further affirma-  
45 tive action as will comply with the provisions of this section,  
46 including but not limited to the withdrawal of certification of an  
47 employee organization established by or assisted in its establish-  
48 ment by any such prohibited practice. The hearing officer shall  
49 order the reinstatement with or without back pay of an employee  
50 discharged or discriminated against in violation of the first para-  
51 graph of this chapter. If the hearing officer determines that a prac-  
52 tice prohibited under Section 10 has not been or is not being  
53 committed, the hearing officer shall state her findings of fact and  
54 issue an order dismissing the complaint.

55 (e) Any order issued pursuant to this section shall become final  
56 and binding unless, within 10 days after notice thereof, any party  
57 requests a review by the board. A review may be made upon the  
58 record, which shall consist of the pleadings, motions, rulings, and

59 the testimony taken at the hearing, if any, or upon such portions of  
60 the record as the parties may designate.

61 (f) Upon any complaint made under this section and a petition  
62 filed by one or more parties to the proceeding, the board, in its  
63 discretion, and for good cause shown, may order that the hearing  
64 be conducted by the board itself. At such hearing the employer,  
65 the employee organization or the person so complained of shall  
66 have the right to appear in person or otherwise to defend against  
67 such complaint. At the discretion of the board, any person may be  
68 allowed to intervene in such proceeding. In any hearing, the board  
69 shall not be bound by the technical rules of evidence prevailing in  
70 the courts. The testimony, if any, may be preserved by a taped  
71 recording or, at the discretion of the parties who shall be respon-  
72 sible for the costs thereof, by stenographic transcription.

73 (g) At the conclusion of the hearing, the board shall state its  
74 findings of fact and shall determine whether a practice prohibited  
75 under Section 10 has been committed and if so, it shall issue an  
76 order requiring the charged party to cease and desist from such  
77 prohibited practice, and shall take such further affirmative action  
78 as will comply with the provisions of this section, including but  
79 not limited to the withdrawal of certification of an employee orga-  
80 nization established by or assisted in its establishment by any such  
81 prohibited practice. The board shall order the reinstatement with  
82 or without back pay of an employee discharged or discriminated  
83 against in violation of the first paragraph of this chapter. If the  
84 board determines that a practice prohibited under Section 10 has  
85 not been or is not being committed, it shall state its findings of  
86 fact and issue an order dismissing the complaint.

87 (h) Whenever it is alleged that a party has refused to bargain  
88 collectively in good faith with the exclusive representative as  
89 required in Section 10 and that such refusal is based upon a dis-  
90 pute involving the appropriateness of a bargaining unit, the divi-  
91 sion shall, except for good cause shown, issue an interim order  
92 requiring the parties to bargain pending its determination of the  
93 dispute. Where such interim order is issued, the board shall hold a  
94 hearing on the charge in a summary manner and shall speedily  
95 determine the issues raised and shall make an appropriate deci-  
96 sion.

97 (i) The board may institute appropriate proceedings in the  
98 appeals court for enforcement of its final orders. Any party  
99 aggrieved by a final order of the board may institute proceedings  
100 for judicial review in the appeals court within 30 days after receipt  
101 of the order. The proceedings in the appeals court shall, insofar as  
102 applicable, be governed by Section 14 of Chapter 30A. The com-  
103 mencement of such proceedings shall not, unless specifically  
104 ordered by the court, operate as a stay of the board's order.

1 SECTION 8. Notwithstanding any general or special law to the  
2 contrary, the division shall have all of the legal powers, authori-  
3 ties, responsibilities, duties, rights, and obligations previously  
4 conferred on the labor relations commission, the board of concili-  
5 ation and arbitration, and the joint-labor management committee,  
6 including without limitation those set forth in Chapter 23C,  
7 Chapter 150, Chapter 150A, and Chapter 150E of the General  
8 Laws. The commissioners of the labor relations commission  
9 holding office upon the effective date of this act may serve on the  
10 Commonwealth employment relations board until the expiration  
11 of their current terms.

1 SECTION 9. This act shall take effect as soon as it has the  
2 force of law under subsection (c) of Section 2 of Article  
3 LXXXVII of the Amendments to the Constitution.