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H.B. No. 4295

A BILL TO BE ENTITLED

AN ACT

relating to the right of certain municipalities to maintain local control over wages, hours, and other terms and conditions of employment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 5, Local Government Code, is amended by adding Chapter 149 to read as follows:

CHAPTER 149. LOCAL CONTROL OF MUNICIPAL EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES

Sec. 149.001. APPLICABILITY. (a) This chapter applies only to a municipality with a population of more than one million that has not adopted Chapter 143 or 174.

(b) This chapter does not apply to:

(1) firefighters or police officers who are covered by Subchapter B of Chapter 142, Subchapter H, I, or J of Chapter 143, Chapter 147, or Chapter 174;

(2) an employee association in which employees described by Subdivision (1) participate; or

(3) employees of a municipally owned utility or other board or political subdivision whose wages, salaries, rates of pay, hours, working conditions, or other terms and conditions of employment are established and governed by an appointed board independent from the municipal governing body.

Sec. 149.002. DEFINITIONS. In this chapter:

1 (1) "Covered employee" means an employee of a
2 municipality, other than a department head or managerial employee,
3 a firefighter or police officer who is covered by Subchapter B of
4 Chapter 142, Subchapter H, I, or J of Chapter 143, or Chapter 174,
5 or a peace officer covered by Chapter 142.

6 (2) "Employee association" means an organization in
7 which municipal employees participate, that exists for the purpose,
8 wholly or partly, of dealing with one or more employers, whether
9 public or private, concerning grievances, labor disputes, wages,
10 rates of pay, hours of employment, or conditions of work affecting
11 public employees, and whose members pay dues by means of an
12 automatic payroll deduction.

13 (3) "Managerial employee" means an employee who:

14 (A) is engaged primarily in executive and
15 management functions; and

16 (B) is charged with the responsibility of
17 developing, administering, or effecting management policies.

18 (4) "Public employer" means any municipality or
19 agency, board, commission, or political subdivision controlled by a
20 municipality that is required to establish the wages, salaries,
21 rates of pay, hours, working conditions, and other terms and
22 conditions of employment of public employees. The term may
23 include, under appropriate circumstances, a mayor, manager,
24 administrator of a municipality, municipal governing body,
25 director of personnel, personnel board, or one or more other
26 officials regardless of the name by which they are designated.

27 Sec. 149.003. GENERAL PROVISIONS RELATING TO AGREEMENTS AND

1 RECOGNITION. (a) A municipality may not be denied local control
2 over wages, salaries, rates of pay, hours of work, other terms and
3 conditions of employment, or other state-mandated personnel
4 issues. A public employer may enter into a mutual agreement
5 governing these issues with an employee association recognized
6 under this chapter as the sole and exclusive bargaining agent for
7 all covered employees that does not advocate the illegal right to
8 strike by covered employees. The applicable statutes, local
9 ordinances, and civil service rules govern a term or condition of
10 employment on which the public employer and the association do not
11 agree.

12 (b) An agreement under this chapter must be written.

13 (c) This chapter does not require the public employer and
14 the recognized employee association to meet and confer or reach an
15 agreement on any issue.

16 (d) This chapter does not authorize an agreement regarding
17 pension or pension-related matters governed by statute.

18 Sec. 149.004. PETITION FOR RECOGNITION: ELECTION OR ACTION
19 BY GOVERNING BODY. (a) Not later than the 30th day after the date
20 the governing body of a municipality receives from an employee
21 association a petition signed by the majority of all covered
22 employees that requests recognition of the association as the sole
23 and exclusive bargaining agent for all the covered employees, the
24 governing body shall:

25 (1) grant recognition of the association as requested
26 in the petition and find that a public employer may meet and confer
27 under this chapter without conducting an election by the voters in

1 the municipality under Section 149.006;

2 (2) defer granting recognition of the association and
3 order an election by the voters in the municipality under Section
4 149.006 regarding whether a public employer may meet and confer
5 under this chapter; or

6 (3) order a certification election under Section
7 149.005 to determine whether the association represents a majority
8 of the covered employees.

9 (b) If the governing body of a municipality orders a
10 certification election under Subsection (a)(3) and the association
11 named in the petition is certified to represent a majority of the
12 covered employees, the governing body shall, not later than the
13 30th day after the date that results of that election are certified:

14 (1) grant recognition of the association as requested
15 in the petition for recognition and find that a public employer may
16 meet and confer under this chapter without conducting an election
17 by the voters in the municipality under Section 149.006; or

18 (2) defer granting recognition of the association and
19 order an election by the voters in the municipality under Section
20 149.006 regarding whether a public employer may meet and confer
21 under this chapter.

22 Sec. 149.005. CERTIFICATION ELECTION. (a) Except as
23 provided by Subsection (b), a certification election ordered under
24 Section 149.004(a)(3) to determine whether an employee association
25 represents a majority of the covered employees shall be conducted
26 according to procedures agreeable to the parties.

27 (b) If the parties are unable to agree on procedures for the

1 certification election, either party may request the American
2 Arbitration Association to conduct the election and to certify the
3 results of the election.

4 (c) The results of an election shall be certified if the
5 employee association receives a majority of the valid votes cast in
6 the election.

7 (d) Certification of the results of an election under this
8 section resolves the question concerning representation.

9 (e) The association is liable for the expenses of the
10 certification election, except that if two or more associations
11 seeking recognition as the sole and exclusive bargaining agent
12 submit a petition signed by at least 30 percent of the employees
13 eligible to sign the petition for recognition, all the associations
14 named in any petition shall share equally the costs of the election.

15 Sec. 149.006. ELECTION TO AUTHORIZE OPERATING UNDER THIS
16 CHAPTER. (a) The governing body of a municipality that receives a
17 petition for recognition under Section 149.004 may order an
18 election to determine whether a public employer may meet and confer
19 under this chapter.

20 (b) An election ordered under this section must be held as
21 part of the next regularly scheduled general election for municipal
22 officials that is held after the date the governing body of the
23 municipality orders the election and that allows sufficient time to
24 prepare the ballot in compliance with other requirements of law.

25 (c) The ballot for an election ordered under this section
26 shall be printed to allow voting for or against the proposition:
27 "Authorizing _____ (name of the municipality) to operate under

1 the state law allowing a municipality to meet and confer and make
2 agreements with the association representing covered employees as
3 provided by state law, preserving the prohibition against strikes
4 and organized work stoppages, and providing penalties for strikes
5 and organized work stoppages."

6 (d) An election called under this section must be held and
7 the returns prepared and canvassed in conformity with the Election
8 Code.

9 (e) If an election authorized under this section is held,
10 the municipality may operate under the other provisions of this
11 chapter only if a majority of the votes cast at the election favor
12 the proposition.

13 (f) If an election authorized under this section is held, an
14 association may not submit a petition for recognition to the
15 governing body of the municipality under Section 149.004 before the
16 second anniversary of the date of the election.

17 Sec. 149.007. CHANGE OR MODIFICATION OF RECOGNITION. (a)
18 The covered employees may modify or change the recognition of the
19 employee association granted under this chapter by filing with the
20 governing body of the municipality a petition signed by a majority
21 of all covered employees.

22 (b) The governing body of the municipality may:

23 (1) recognize the change or modification as provided
24 by the petition; or

25 (2) order a certification election in accordance with
26 Section 149.005 regarding whether to do so.

27 Sec. 149.008. STRIKES PROHIBITED. (a) A covered employee

1 may not engage in a strike or organized work stoppage against this
2 state or the municipality.

3 (b) A covered employee who participates in a strike forfeits
4 any civil service rights, reemployment rights, and other rights,
5 benefits, or privileges the employee may have as a result of the
6 employee's employment or prior employment with the municipality.

7 (c) This section does not affect the right of a person to
8 cease work if the person is not acting in concert with others in an
9 organized work stoppage.

10 Sec. 149.009. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) A
11 public employer in a municipality that chooses to meet and confer
12 under this chapter shall recognize an association that is
13 recognized under Section 149.004 or 149.005 as the sole and
14 exclusive bargaining agent for the covered employees.

15 (b) The public employer shall recognize the employee
16 association until recognition of the association is withdrawn, in
17 accordance with Section 149.007, by a majority of the covered
18 employees eligible to sign a petition for recognition.

19 Sec. 149.010. SELECTION OF BARGAINING AGENT; BARGAINING
20 UNIT. (a) The public employer's chief executive officer or the
21 chief executive officer's designee shall select one or more persons
22 to represent the public employer as its sole and exclusive
23 bargaining agent to meet and confer on issues related to the wages,
24 hours of employment, and other terms and conditions of employment
25 of covered employees.

26 (b) An employee association may designate one or more
27 persons to negotiate or bargain on the association's behalf.

1 (c) A municipality's bargaining unit is composed of all the
2 covered employees.

3 Sec. 149.011. PROTECTED RIGHTS OF EMPLOYEES. A meet and
4 confer agreement ratified under this chapter may not interfere with
5 the right of a member of a bargaining unit to pursue allegations of
6 discrimination based on race, creed, color, national origin,
7 religion, age, sex, or disability with the Texas Workforce
8 Commission civil rights division or the federal Equal Employment
9 Opportunity Commission or to pursue affirmative action litigation.

10 Sec. 149.012. OPEN RECORDS. (a) A proposed meet and confer
11 agreement and a document prepared and used by the municipality,
12 including a public employer, in connection with the proposed
13 agreement are available to the public under Chapter 552, Government
14 Code, only after the agreement is ready to be ratified by the
15 governing body of the municipality.

16 (b) This section does not affect the application of
17 Subchapter C, Chapter 552, Government Code, to a document prepared
18 and used in connection with the agreement.

19 Sec. 149.013. OPEN DELIBERATIONS. (a) Deliberations
20 relating to a meet and confer agreement or proposed agreement under
21 this chapter between representatives of the public employer and
22 representatives of the employee association recognized under this
23 chapter as the sole and exclusive bargaining agent for the covered
24 employees must be open to the public and comply with state law.

25 (b) Subsection (a) may not be construed to prohibit the
26 representatives of the public employer or the representatives of
27 the recognized employee association from conducting private

1 caucuses that are not open to the public during meet and confer
2 negotiations.

3 Sec. 149.014. RATIFICATION AND ENFORCEABILITY OF
4 AGREEMENT. (a) An agreement under this chapter is enforceable and
5 binding on the public employer, the recognized employee
6 association, and the employees covered by the meet and confer
7 agreement only if:

8 (1) the governing body of the municipality ratified
9 the agreement by a majority vote; and

10 (2) the recognized employee association ratified the
11 agreement by conducting a secret ballot election at which the
12 majority of the covered employees who are members of the
13 association favored ratifying the agreement.

14 (b) A meet and confer agreement ratified as described by
15 Subsection (a) may establish a procedure by which the parties agree
16 to resolve disputes related to a right, duty, or obligation
17 provided by the agreement, including binding arbitration on a
18 question involving interpretation of the agreement.

19 (c) A state district court of a judicial district in which
20 the municipality is located has jurisdiction to hear and resolve a
21 dispute under the ratified meet and confer agreement on the
22 application of a party to the agreement aggrieved by an action or
23 omission of the other party when the action or omission is related
24 to a right, duty, or obligation provided by the agreement. The
25 court may issue proper restraining orders, temporary and permanent
26 injunctions, or any other writ, order, or process, including
27 contempt orders, that are appropriate to enforcing the agreement.

1 Sec. 149.015. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
2 OPERATE UNDER THIS CHAPTER. (a) The governing body of a
3 municipality that granted recognition of an employee association
4 under Section 149.004 without conducting an election under Section
5 149.006 may withdraw recognition of the association by providing to
6 the association not less than 90 days' written notice that:

7 (1) the governing body is withdrawing recognition of
8 the association; and

9 (2) any agreement between the governing body and the
10 association will not be renewed.

11 (b) The governing body of a municipality that granted
12 recognition of an employee association after conducting an election
13 under Section 149.006 may order an election to determine whether a
14 public employer may continue to meet and confer under this chapter.
15 The governing body may not order an election under this subsection
16 until the second anniversary of the date of the election under
17 Section 149.006.

18 (c) An election ordered under Subsection (b) must be held as
19 part of the next regularly scheduled general election for municipal
20 officers that occurs after the date the governing body of the
21 municipality orders the election and that allows sufficient time to
22 prepare the ballot in compliance with other requirements of law.

23 (d) The ballot for an election ordered under Subsection (b)
24 shall be printed to allow voting for or against the proposition:
25 "Authorizing _____ (name of the municipality) to continue to
26 operate under the state law allowing a municipality to meet and
27 confer and make agreements with the association representing

1 covered employees as provided by state law, preserving the
2 prohibition against strikes and organized work stoppages, and
3 providing penalties for strikes and organized work stoppages."

4 (e) An election ordered under Subsection (b) must be held
5 and the returns prepared and canvassed in conformity with the
6 Election Code.

7 (f) If an election ordered under Subsection (b) is held, the
8 municipality may continue to operate under this chapter only if a
9 majority of the votes cast at the election favor the proposition.

10 (g) If an election ordered under Subsection (b) is held, an
11 association may not submit a petition for recognition to the
12 governing body of the municipality under Section 149.004 before the
13 second anniversary of the date of the election.

14 Sec. 149.016. ELECTION TO REPEAL AGREEMENT. (a) Not later
15 than the 45th day after the date a meet and confer agreement is
16 ratified by the governing body of the municipality and the
17 recognized employee association, a petition calling for the repeal
18 of the agreement signed by at least 10 percent of the qualified
19 voters residing in the municipality may be presented to the person
20 charged with ordering an election under Section 3.004, Election
21 Code.

22 (b) If a petition is presented under Subsection (a), the
23 governing body of the municipality shall:

24 (1) repeal the meet and confer agreement; or
25 (2) certify that it is not repealing the agreement and
26 call an election to determine whether to repeal the agreement.

27 (c) An election called under Subsection (b)(2) may be held

1 as part of the next regularly scheduled general election for the
2 municipality or at a special election called by the governing body
3 for that purpose. The ballot shall be printed to allow voting for
4 or against the proposition: "Repeal the meet and confer agreement
5 ratified on _____ (date agreement was ratified) by the _____
6 (name of the governing body of the municipality) and the _____ (name
7 of the recognized employee association) concerning wages,
8 salaries, rates of pay, hours of work, and other terms of
9 employment."

10 (d) If a majority of the votes cast at the election favor the
11 repeal of the agreement, the agreement is void.

12 Sec. 149.017. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.
13 A written meet and confer agreement ratified under this chapter
14 preempts, during the term of the agreement and to the extent of any
15 conflict, all contrary state statutes, local ordinances, executive
16 orders, civil service provisions, or rules adopted by this state or
17 a political subdivision or agent of this state, including a
18 personnel board, civil service commission, or home-rule
19 municipality, other than a statute, ordinance, executive order,
20 civil service provision, or rule regarding pensions or
21 pension-related matters.

22 SECTION 2. This Act takes effect September 1, 2009.