

By: Coleman

H.B. No. 4298

A BILL TO BE ENTITLED

AN ACT

relating to the right of certain hospital districts 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 B, Title 5, Local Government Code, is amended by adding Chapter 163 to read as follows:

CHAPTER 163. LOCAL CONTROL OF EMPLOYMENT MATTERS IN CERTAIN HOSPITAL DISTRICTS

Sec. 163.001. APPLICABILITY. This chapter applies only to a hospital district whose boundaries are coextensive with a county with a population of more than three million.

Sec. 163.002. DEFINITIONS. In this chapter:

(1) "Covered employee" means an employee of a hospital district.

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

(3) "Public employer" means any hospital district required to establish the wages, salaries, rates of pay, hours,

1 working conditions, and other terms and conditions of employment of
2 public employees.

3 Sec. 163.003. GENERAL PROVISIONS RELATING TO AGREEMENTS AND
4 RECOGNITION. (a) A hospital district may not be denied local
5 control over wages, salaries, rates of pay, hours of work, other
6 terms and conditions of employment, or other state-mandated
7 personnel issues. A public employer may enter into a mutual
8 agreement governing these issues with an employee association
9 recognized under this chapter as the sole and exclusive bargaining
10 agent for all covered employees that does not advocate the illegal
11 right to strike by covered employees. The applicable statutes,
12 local orders or ordinances, and civil service rules govern a term or
13 condition of employment on which the public employer and the
14 association do not agree.

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

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

19 (d) This chapter does not authorize an agreement regarding
20 pension or pension-related matters governed by Subtitle F, Title 8,
21 Government Code.

22 Sec. 163.004. PETITION FOR RECOGNITION: ELECTION OR ACTION
23 BY BOARD. (a) Not later than the 30th day after the date the board
24 of hospital managers of a hospital district receives from an
25 employee association a petition signed by the majority of all
26 covered employees of the hospital district that requests
27 recognition of the association as the sole and exclusive bargaining

1 agent for all the covered employees of that employer, the board
2 shall:

3 (1) grant recognition of the association as requested
4 in the petition and find that a public employer may meet and confer
5 under this chapter without conducting an election by the voters in
6 the district under Section 163.006;

7 (2) defer granting recognition of the association and
8 order an election by the voters in the district under Section
9 163.006 regarding whether a public employer may meet and confer
10 under this chapter; or

11 (3) order a certification election under Section
12 163.005 to determine whether the association represents a majority
13 of the covered employees of the district.

14 (b) If the board of hospital managers of a hospital district
15 orders a certification election under Subsection (a)(3) and the
16 association named in the petition is certified to represent a
17 majority of the covered employees, the board shall, not later than
18 the 30th day after the date that results of that election are
19 certified:

20 (1) grant recognition of the association as requested
21 in the petition for recognition and find that a public employer may
22 meet and confer under this chapter without conducting an election
23 by the voters in the district under Section 163.006; or

24 (2) defer granting recognition of the association and
25 order an election by the voters in the district under Section
26 163.006 regarding whether a public employer may meet and confer
27 under this chapter.

1 Sec. 163.005. CERTIFICATION ELECTION. (a) Except as
2 provided by Subsection (b), a certification election ordered under
3 Section 163.004(a)(3) to determine whether an employee association
4 represents a majority of the covered employees shall be conducted
5 according to procedures agreeable to the parties.

6 (b) If the parties are unable to agree on procedures for the
7 certification election, either party may request the American
8 Arbitration Association to conduct the election and to certify the
9 results of the election.

10 (c) The results of an election shall be certified if the
11 employee association receives a majority of valid votes cast in the
12 election.

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

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

21 Sec. 163.006. ELECTION TO AUTHORIZE OPERATING UNDER THIS
22 CHAPTER. (a) The board of hospital managers of a hospital district
23 that receives a petition for recognition under Section 163.004 may
24 order an election to determine whether a public employer may meet
25 and confer under this chapter.

26 (b) An election ordered under this section must be held as
27 part of the next regularly scheduled general election for county

1 officers that is held after the date the board of hospital managers
2 orders the election and that allows sufficient time to prepare the
3 ballot in compliance with other requirements of law.

4 (c) The ballot for an election ordered under this section
5 shall be printed to permit voting for or against the proposition:
6 "Authorizing _____ (name of the hospital district) to operate
7 under the state law allowing a hospital district to meet and confer
8 and make agreements with the association representing employees of
9 the hospital district as provided by state law, preserving the
10 prohibition against strikes and organized work stoppages, and
11 providing penalties for strikes and organized work stoppages."

12 (d) An election called under this section must be held and
13 the returns prepared and canvassed in conformity with the Election
14 Code.

15 (e) If an election authorized under this section is held,
16 the hospital district may operate under the other provisions of
17 this chapter only if a majority of the votes cast at the election
18 favor the proposition.

19 (f) If an election authorized under this section is held, an
20 association may not submit a petition for recognition to the board
21 of hospital managers of the hospital district under Section 163.004
22 before the second anniversary of the date of the election.

23 Sec. 163.007. CHANGE OR MODIFICATION OF RECOGNITION. (a)
24 The covered employees may modify or change the recognition of the
25 employee association granted under this chapter by filing with the
26 board of hospital managers of the hospital district a petition
27 signed by a majority of all covered employees.

1 (b) The board of hospital managers of the hospital district
2 may:

3 (1) recognize the change or modification as provided
4 by the petition; or

5 (2) order a certification election in accordance with
6 Section 163.005 regarding whether to do so.

7 Sec. 163.008. STRIKES PROHIBITED. (a) A covered employee
8 may not engage in a strike or organized work stoppage against this
9 state or the hospital district.

10 (b) A covered employee who participates in a strike forfeits
11 any civil service rights, reemployment rights, and other rights,
12 benefits, or privileges the employee may have as a result of the
13 employee's employment or prior employment with the hospital
14 district.

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

18 Sec. 163.009. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) A
19 public employer that chooses to meet and confer under this chapter
20 shall recognize an association that is recognized under Section
21 163.004 or 163.005 as the sole and exclusive bargaining agent for
22 the covered employees of that employer.

23 (b) The public employer shall recognize the employee
24 association until recognition of the association is withdrawn, in
25 accordance with Section 163.007, by a majority of the covered
26 employees eligible to sign a petition for recognition.

27 Sec. 163.010. SELECTION OF BARGAINING AGENT; BARGAINING

1 UNIT. (a) The public employer's chief executive officer or the
2 chief executive officer's designee shall select one or more persons
3 to represent the public employer as its sole and exclusive
4 bargaining agent to meet and confer on issues related to the wages,
5 hours of employment, and other terms and conditions of employment
6 of covered employees.

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

9 (c) A hospital district's bargaining unit is composed of all
10 the covered employees of the hospital district.

11 Sec. 163.011. PROTECTED RIGHTS OF EMPLOYEES. A meet and
12 confer agreement ratified under this chapter may not interfere with
13 the right of a member of a bargaining unit to pursue allegations of
14 discrimination based on race, creed, color, national origin,
15 religion, age, sex, or disability with the Texas Workforce
16 Commission civil rights division or the federal Equal Employment
17 Opportunity Commission or to pursue affirmative action litigation.

18 Sec. 163.012. OPEN RECORDS. (a) A proposed meet and confer
19 agreement and a document prepared and used by the hospital district
20 in connection with the proposed agreement are available to the
21 public under Chapter 552, Government Code, only after the agreement
22 is ready to be ratified by the board of hospital managers of the
23 hospital district.

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

27 Sec. 163.013. OPEN DELIBERATIONS. (a) Deliberations

1 relating to a meet and confer agreement or proposed agreement under
2 this chapter between representatives of the hospital district and
3 representatives of the employee association recognized under this
4 chapter as the sole and exclusive bargaining agent for the covered
5 employees must be open to the public and comply with state law.

6 (b) Subsection (a) may not be construed to prohibit the
7 representatives of the hospital district or the representatives of
8 the recognized employee association from conducting private
9 caucuses that are not open to the public during meet and confer
10 negotiations.

11 Sec. 163.014. RATIFICATION AND ENFORCEABILITY OF
12 AGREEMENT. (a) An agreement under this chapter is enforceable and
13 binding on the hospital district, the recognized employee
14 association, and the employees covered by the meet and confer
15 agreement only if:

16 (1) the board of hospital managers of the hospital
17 district ratified the agreement by a majority vote; and

18 (2) the recognized employee association ratified the
19 agreement by conducting a secret ballot election at which the
20 majority of the covered employees who are members of the
21 association favored ratifying the agreement.

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

27 (c) A state district court of a judicial district in which

1 the hospital district is located has jurisdiction to hear and
2 resolve a dispute under the ratified meet and confer agreement on
3 the application of a party to the agreement aggrieved by an action
4 or omission of the other party when the action or omission is
5 related to a right, duty, or obligation provided by the agreement.
6 The court may issue proper restraining orders, temporary and
7 permanent injunctions, or any other writ, order, or process,
8 including contempt orders, that are appropriate to enforcing the
9 agreement.

10 Sec. 163.015. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
11 OPERATE UNDER THIS CHAPTER. (a) The board of hospital managers of
12 a hospital district that granted recognition of an employee
13 association under Section 163.004 without conducting an election
14 under Section 163.006 may withdraw recognition of the association
15 by providing to the association not less than 90 days' written
16 notice that:

17 (1) the board is withdrawing recognition of the
18 association; and

19 (2) any agreement between the board and the
20 association will not be renewed.

21 (b) The board of hospital managers of a hospital district
22 that granted recognition of an employee association after
23 conducting an election under Section 163.006 may order an election
24 to determine whether a public employer may continue to meet and
25 confer under this chapter. The board may not order an election
26 under this subsection until the second anniversary of the date of
27 the election under Section 163.006.

1 (c) An election ordered under Subsection (b) must be held as
2 part of the next regularly scheduled general election for county
3 officers that occurs after the date the board of hospital managers
4 of the hospital district orders the election and that allows
5 sufficient time to prepare the ballot in compliance with other
6 requirements of law.

7 (d) The ballot for an election ordered under Subsection (b)
8 shall be printed to permit voting for or against the proposition:
9 "Authorizing _____ (name of the hospital district) to continue
10 to operate under the state law allowing a hospital district to meet
11 and confer and make agreements with the association representing
12 employees of a hospital district as provided by state law,
13 preserving the prohibition against strikes and organized work
14 stoppages, and providing penalties for strikes and organized work
15 stoppages."

16 (e) An election ordered under Subsection (b) must be held
17 and the returns prepared and canvassed in conformity with the
18 Election Code.

19 (f) If an election ordered under Subsection (b) is held, the
20 hospital district may continue to operate under this chapter only
21 if a majority of the votes cast at the election favor the
22 proposition.

23 (g) If an election ordered under Subsection (b) is held, an
24 association may not submit a petition for recognition to the board
25 of hospital managers of the hospital district under Section 163.004
26 before the second anniversary of the date of the election.

27 Sec. 163.016. ELECTION TO REPEAL AGREEMENT. (a) Not later

1 than the 45th day after the date a meet and confer agreement is
2 ratified by the board of hospital managers of the hospital district
3 and the recognized employee association, a petition calling for the
4 repeal of the agreement signed by at least 10 percent of the
5 qualified voters residing in the district may be presented to the
6 person charged with ordering an election under Section 3.004,
7 Election Code.

8 (b) If a petition is presented under Subsection (a), the
9 board of hospital managers of the hospital district shall:

- 10 (1) repeal the meet and confer agreement; or
11 (2) certify that it is not repealing the agreement and
12 call an election to determine whether to repeal the agreement.

13 (c) An election called under Subsection (b)(2) may be held
14 as part of the next regularly scheduled general election for the
15 county in which the hospital district is located or at a special
16 election called by the board of hospital managers of the hospital
17 district for that purpose. The ballot shall be printed to permit
18 voting for or against the proposition: "Repeal the meet and confer
19 agreement ratified on _____ (date agreement was ratified) by the
20 _____ (name of the board of hospital managers of the hospital
21 district) and the _____ (name of the recognized employee
22 association) concerning wages, salaries, rates of pay, hours of
23 work, and other terms of employment."

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

26 Sec. 163.017. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.

27 A written meet and confer agreement ratified under this chapter

1 preempts, during the term of the agreement and to the extent of any
2 conflict, all contrary state statutes, local orders or ordinances,
3 executive orders, civil service provisions, or rules adopted by
4 this state or a political subdivision or agent of this state,
5 including a civil service commission, county, or hospital district,
6 other than a statute, order, ordinance, executive order, civil
7 service provision, or rule regarding pensions or pension-related
8 matters.

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