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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2939

03/10/2014 Authored by Anzelc, Metsa, Melin and Sundin

The bill was read for the first time and referred to the Committee on Labor, Workplace and Regulated Industries

1.1 A bill for an act
1.2 relating to labor and employment; providing employee protections in joint powers
1.3 agreements; proposing coding for new law in Minnesota Statutes, chapter 179A.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. **[179A.60] JOINT POWERS AGREEMENTS.**

1.6 Subdivision 1. **Definition.** For the purposes of this section, "entity" means:

1.7 (1) a joint powers board, authority, or organization formed or created pursuant
1.8 to section 471.59;

1.9 (2) a joint powers board, authority, or organization formed or created pursuant to
1.10 chapter 401 or 402;

1.11 (3) a service delivery authority created pursuant to section 402A.35; and

1.12 (4) any other organization acting on behalf of two or more home rule charter or
1.13 statutory cities, school districts, counties, or other governmental units or boards under any
1.14 other law providing for joint and cooperative action between governmental units or bodies.

1.15 Boards, authorities, organizations, school districts, municipalities, counties, or any other
1.16 governmental units that form an entity are members of the entity.

1.17 Subd. 2. **Application.** Notwithstanding the provisions of section 179A.12 or
1.18 any other law, this section governs the initial certification and decertification, if any,
1.19 of exclusive representatives for an entity.

1.20 Subd. 3. **Employment, wage, benefits, employee organization status, and legal**
1.21 **status continued.** Employees of an entity are public employees under section 179A.03,
1.22 subdivision 14. Entities are public employers under section 179A.03, subdivision 15.

1.23 Subd. 4. **Existing majorities.** The commissioner of the Minnesota Bureau of
1.24 Mediation Services shall certify an employee organization for employees of an entity

2.1 governed by this section as exclusive representative for an appropriate unit upon a petition
2.2 filed with the commissioner by the organization demonstrating that the petitioner is
2.3 certified pursuant to section 179A.12 as the exclusive representative of a majority of the
2.4 employees included within the unit as of that date. Two or more employee organizations
2.5 that represent the employees in a unit may petition jointly under this section, provided
2.6 that any organization may withdraw from a joint certification in favor of the remaining
2.7 organizations on 30 days' notice to the remaining organizations, the employer, and the
2.8 commissioner, without affecting the rights and obligations of the remaining organizations
2.9 or the employer. The commissioner shall make a determination on a timely petition within
2.10 45 days of its receipt.

2.11 Subd. 5. **No existing majority.** If no exclusive representative is certified under
2.12 subdivision 4, the commissioner shall certify an employee organization as exclusive
2.13 representative for an appropriate unit established upon a petition filed by the organization
2.14 demonstrating that the petitioner is certified under section 179A.12 as the exclusive
2.15 representative of fewer than a majority of the employees included within the unit if no
2.16 other employee organization so certified and a majority of the employees in the unit are
2.17 represented by employee organizations under section 179A.12 on the date of the petition.
2.18 Two or more employee organizations, each of which represents employees included in
2.19 the unit, may petition jointly under this subdivision, provided that any organization may
2.20 withdraw from a joint certification in favor of the remaining organizations on 30 days'
2.21 notice to the remaining organizations, the employer, and the commissioner without
2.22 affecting the rights and obligations of the remaining organizations or the employer. The
2.23 commissioner shall make a determination on a timely petition within 45 days of its receipt.

2.24 Subd. 6. **Selection.** If no exclusive representative is certified under subdivision 4
2.25 or 5, and an employee organization petitions the commissioner within 90 days of the
2.26 creation of the entity demonstrating that a majority of the employees included within an
2.27 appropriate unit wish to be represented by the petitioner, where this majority is evidenced
2.28 by current dues deduction rights, signed statements from employees in the entity that
2.29 are not currently represented by any employee organization plainly indicating that the
2.30 signatories wish to be represented for collective bargaining purposes by the petitioner
2.31 rather than by any other organization, or a combination of those, the commissioner
2.32 shall certify the petitioner as exclusive representative of the employees in the unit. The
2.33 commissioner shall make a determination on a timely petition within 45 days of its receipt.

2.34 Subd. 7. **Election.** If no exclusive representative is certified under subdivision
2.35 4, 5, or 6, and an employee organization petitions the commissioner subsequent to the
2.36 creation of the entity demonstrating that at least 30 percent of the employees included

3.1 within an appropriate unit wish to be represented by the petitioner, where this 30 percent
3.2 is evidenced by current dues deduction rights, signed statements from employees in
3.3 counties within the entity that are not currently represented by any employee organization
3.4 plainly indicating that the signatories wish to be represented for collective bargaining
3.5 purposes by the petitioner rather than by any other organization, or a combination of
3.6 those, the commissioner shall conduct a secret ballot election to determine the wishes of
3.7 the majority. The election must be conducted within 45 days of receipt or final decision on
3.8 any petitions filed pursuant to subdivision 6, whichever is later. The election is governed
3.9 by section 179A.12, where not inconsistent with other provisions of this section.

3.10 Subd. 8. **Decertification.** The commissioner may not consider a petition for
3.11 decertification of an exclusive representative certified under this section for one year after
3.12 an entity becomes permanent or one year from certification, unless section 179A.20,
3.13 subdivision 6, applies.

3.14 Subd. 9. **Continuing contract.** (a) The terms and conditions of collective
3.15 bargaining agreements covering the members of the entity's employees of the entity remain
3.16 in effect until a successor agreement becomes effective or, if no employee organization
3.17 petitions to represent the employees of the entity after it becomes permanent, until one
3.18 year after the establishment of the entity as permanent.

3.19 (b) Any accrued leave, including but not limited to sick leave, vacation time,
3.20 compensatory leave, or paid time off, or severance pay benefits accumulated by an
3.21 employee of a member of the entity under policies of the previously employing member of
3.22 the entity or a collective bargaining agreement between the previously employing member
3.23 of the entity and an exclusive representative, shall continue to apply as long as these
3.24 employees remain employees of the entity. An employee who was eligible for the benefits
3.25 of the Family and Medical Leave Act at the previously employing member of the entity
3.26 shall be provided the same benefits at the newly created entity.

3.27 Subd. 10. **Seniority upon creation of a new entity.** Upon creation of a new entity,
3.28 seniority shall be based on the employee's continuous service with a member of the entity
3.29 and the employee's service with the entity. All employees of an entity whose wages and
3.30 benefits are dependent on seniority, including, but not limited to, vacation, sick leave,
3.31 retirement health insurance, and severance shall receive those wages and benefits based
3.32 upon seniority as defined in this subdivision.

3.33 Subd. 11. **Layoffs and recalls.** If it is necessary, prior to the entity becoming
3.34 permanent or prior to negotiation of a new collective bargaining agreement with the entity,
3.35 to lay off an employee of an entity member and if two or more employees previously
3.36 performed the work for members of the entity, seniority based on continuous length of

4.1 service with an entity member shall be the factor that determines which qualified employee
4.2 shall be offered the job by the entity. An employee of a member of the entity whose work is
4.3 being transferred to the entity shall have the option of being laid off. Recalls shall be done
4.4 by seniority. Employees who are subject to layoff shall remain eligible for recall rights to
4.5 the new entity or dissolved entity for a period of 24 months from the date of layoff.

4.6 Subd. 12. **Wages.** Employees of an entity who were previously employed by a
4.7 member of the entity whose wages are higher than a wage they would receive under a wage
4.8 scale in a collective bargaining agreement with the entity shall continue to receive that
4.9 wage until the wage they would receive under the collective bargaining agreement with
4.10 the entity exceeds their prior wage at which point the employees shall be placed on the
4.11 step of the wage scale in the collective bargaining agreement that exceeds their prior wage.

4.12 Subd. 13. **Employee assistance.** (a) It is the policy of the state of Minnesota that
4.13 any entity must make efforts to ensure that fair and equitable arrangements are carried out
4.14 to protect the interests of employees and to provide the best possible service to the public.
4.15 The employer shall make an effort to train and retrain existing employees for a changing
4.16 work environment. Where employees of an entity may suffer loss of existing positions and
4.17 employment, the employer shall assist affected employees in finding suitable employment.

4.18 (b) Options available to employees whose positions will be eliminated by an entity
4.19 must include, at a minimum, job and training opportunities necessary to qualify for
4.20 another job in the same, an equal, or a lower classification with their current employer or
4.21 the new entity.

4.22 Subd. 14. **Contract and representation responsibilities.** (a) Certified exclusive
4.23 representatives of units of employees of the participating members of the entity before the
4.24 entity becomes permanent, or after it becomes permanent pursuant to this subdivision, are
4.25 responsible for administration of their contracts and for other contractual duties and have
4.26 the right to dues and fair share fee deduction via payroll deduction and other contractual
4.27 privileges and rights until a contract is agreed upon with the entity or a new exclusive
4.28 representative is certified. Exclusive representatives of entity employees certified after
4.29 the creation of the entity are immediately upon certification responsible for bargaining
4.30 on behalf of employees within the unit. They are also responsible for administering
4.31 grievances arising under previous contracts covering employees included within the entity
4.32 that remain unresolved upon agreement with the entity on a contract. Where the employer
4.33 does not object, these responsibilities may be varied by agreement between outgoing and
4.34 incoming exclusive representatives. All other rights and duties of representation begin
4.35 when an entity becomes permanent, except that exclusive representatives certified upon or
4.36 after the entity becomes permanent shall immediately, upon certification, have the right to

5.1 all employer information and all forms of access to employees within the bargaining unit
5.2 which would be permitted to the current contract holder, including the rights in section
5.3 179A.07, subdivision 6. Exclusive representatives certified after the entity becomes
5.4 permanent are immediately, upon certification, responsible for bargaining on behalf of all
5.5 previously unrepresented employees assigned to their units.

5.6 (b) Nothing in this section prevents an exclusive representative certified after the
5.7 effective dates of this section from assessing fair share or dues deductions immediately
5.8 upon certification if the employees were unrepresented for collective bargaining purposes
5.9 before that certification.

5.10 Subd. 15. **Privatization prohibited.** Entities shall not contract with nonmembers of
5.11 the entity or nongovernmental units for the performance of work other than specialized
5.12 consulting work that is not the ordinary work of the entity and expected to last one year or
5.13 less from the date the work begins.

5.14 Subd. 16. **Health insurance.** Employees of an entity who were previously
5.15 employees of a member of the entity and covered by a collective bargaining agreement
5.16 with the member of the entity shall continue to be covered by the group insurance plan
5.17 of the member of the entity until a collective bargaining agreement is negotiated and
5.18 implemented with the newly created entity.

5.19 Subd. 17. **Rights under state and federal laws.** Employees of an entity who were
5.20 previously employees of a member of the entity shall continue to have all rights provided
5.21 them under federal and state law while they were employed by the member of the entity.
5.22 If, because of the formation of the entity, its employees become ineligible for these rights,
5.23 the entity shall continue to afford them these rights.

5.24 **EFFECTIVE DATE.** This section is effective the day following final enactment
5.25 and applies to entities created after that date.