

SECOND REGULAR SESSION

HOUSE BILL NO. 1443

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WILDBERGER (Sponsor), DARROUGH, WALSH, SELBY, DOUGHERTY, GREEN, KRATKY, SAGER, HARRIS (110), ZWEIFEL, BISHOP, WAGNER, MEINERS, BURNETT, SCHOEMEHL, CORCORAN, GEORGE, SPRENG, WILSON (42), LIESE, VOGT, SHOEMYER AND SALVA (Co-sponsors).

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STEPHEN S. DAVIS, Chief Clerk

4152L.011

AN ACT

To repeal sections 105.520, RSMo, and to enact in lieu thereof seven new sections relating to collective bargaining rights for emergency response personnel.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 105.520, RSMo, is repealed and seven new sections enacted in lieu thereof, to be known as sections 105.520, 105.540, 105.542, 105.544, 105.546, 105.548, and 105.550, to read as follows:

105.520. **Except for employees of any political subdivision that has adopted the provisions of sections 105.540 to 105.550**, whenever such proposals are presented by the exclusive bargaining representative to a public body, the public body or its designated representative or representatives shall meet, confer and discuss such proposals relative to salaries and other conditions of employment of the employees of the public body with the labor organization which is the exclusive bargaining representative of its employees in a unit appropriate. Upon the completion of discussions, the results shall be reduced to writing and be presented to the appropriate administrative, legislative or other governing body in the form of an ordinance, resolution, bill or other form required for adoption, modification or rejection.

105.540. 1. Sections 105.540 to 105.550 shall be known and may be cited as the "Missouri Emergency Response Personnel Strike Prevention and Arbitration Act".

2. Notwithstanding the provisions of section 105.520, collective bargaining between emergency response personnel and their respective appropriate legislative bodies shall be governed by the Missouri emergency response personnel strike prevention and arbitration act, if adopted by a legislative body under section 105.550.

7 **3. It is the public policy of this state that, where the rights of public employees to**
8 **strike is clearly prohibited, there should be an alternative mechanism to speedily resolve**
9 **all disputes concerning the working conditions of employees in a fair, efficient, and**
10 **effective manner. The Missouri emergency response personnel strike prevention and**
11 **arbitration act shall be liberally construed to effect this policy.**

105.542. As used in the Missouri emergency response personnel strike prevention
2 **and arbitration act, the following terms mean:**

3 **(1) "Appropriate legislative body", a city council, a municipal or county governing**
4 **body, board, or authority, or the administrative, legislative, or other governing body of any**
5 **employer as defined in this section with authority to approve appropriations, make rules**
6 **and regulations, and otherwise exercise appropriate legislative power and discretion;**

7 **(2) "Employer", any political subdivision of the state, including, without limitation,**
8 **any town, township, city, county, borough, district, including constitutional charter cities**
9 **and counties, and any person designated by the employer to act in its interest in dealing**
10 **with employees;**

11 **(3) "Exclusive representative", the labor organization which has been certified for**
12 **the purposes of the Missouri emergency response personnel strike prevention and**
13 **arbitration act by the state board of mediation as the exclusive bargaining representative**
14 **of the employees in an appropriate unit, or is recognized by an employer before the**
15 **effective date of the Missouri emergency response personnel strike prevention and**
16 **arbitration act as the exclusive representative of the employees in an appropriate unit;**

17 **(4) "Emergency response personnel", full-time, salaried members of any regularly**
18 **constituted fire department or ambulance department in any political subdivision of this**
19 **state;**

20 **(5) "Good faith bargaining", negotiations between two parties for the purpose of**
21 **reaching an agreement;**

22 **(6) "Impasse", the failure of the appropriate legislative body and the exclusive**
23 **bargaining representative to reach an agreement in the course of negotiations;**

24 **(7) "Labor dispute", any controversy concerning wages, hours, or other terms and**
25 **conditions of employment or concerning the association or representation of persons in**
26 **negotiating, fixing, maintaining, changing, or seeking to arrange wages, hours, or other**
27 **terms and conditions of employment, regardless of whether the disputants stand in the**
28 **proximate relation of employer and employee;**

29 **(8) "Labor organization", any organization of any kind in which employees**
30 **participate and which exists for the purpose, in whole or in part, of dealing with employers**
31 **concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other**

32 terms and conditions of employment;

33 (9) "Mediation", assistance by an impartial third-party to reconcile an impasse
34 between the exclusive bargaining representative and the appropriate legislative body
35 regarding wages, hours, and other terms and conditions of employment through
36 interpretation, suggestion, and advice to resolve the impasse;

37 (10) "Person", one or more individuals, labor organizations, corporations, legal
38 representatives, trustees, trustees in bankruptcy, or receivers;

39 (11) "Public employee" or "employee", any employee of an employer as defined
40 in this section, and shall include any individual whose work has ceased as a consequence
41 of, or connection with, any unfair labor practice or concerted employee action;

42 (12) "Strike", the concerted failure to report for duty, the willful absence from
43 one's position, the stoppage of work, or the abstinence, in whole or in part, from the full,
44 faithful, and proper performance of the duties of employment, for the purpose of inducing,
45 influencing, or coercing a change in the conditions or compensations, or the rights,
46 privileges, or obligations of employment. No provision of the Missouri emergency response
47 personnel strike prevention and arbitration act shall be construed to limit, impair, or affect
48 the right of any public employee to the expression or communication of a view, grievance,
49 or complaint or opinion on any matter related to the conditions or compensation of public
50 employment or their betterment, so long as such expression or communication is not
51 designed to, and does not interfere with the full, faithful, and proper performance of the
52 duties of employment.

105.544. 1. Emergency response personnel may bargain collectively about wages,
2 hours, and other conditions of employment with the appropriate legislative body.
3 Emergency response personnel shall be represented in the collective bargaining by an
4 exclusive bargaining representative chosen by the employees under the rules of the state
5 board of mediation.

6 2. Any employee representative in existence on the effective date of the Missouri
7 emergency response personnel strike prevention and arbitration act shall continue, without
8 the requirement of an election and certification, until such time as a question concerning
9 representation is appropriately raised under the rules of the state board of mediation or
10 until the state board of mediation would find the unit not appropriate after challenge by
11 the appropriate legislative body, a member of the unit, or an employee organization, except
12 that, the appropriateness of the unit shall not be challenged until the expiration of any
13 collective bargaining agreement in effect on the effective date of the Missouri emergency
14 response personnel strike prevention and arbitration act.

15 3. Representatives selected by the emergency response personnel in a unit certified

16 for collective bargaining purposes shall be the exclusive representative of all the employees
17 in the unit to bargain on wages, hours, and other terms and conditions of employment.

18 4. Within ten days of the receipt of a written request to meet and collectively
19 bargain from the exclusive bargaining representative, the appropriate legislative body shall
20 meet and collectively bargain in good faith with the exclusive bargaining representative.

21 5. Whenever wages or other matters requiring appropriations of money by the
22 appropriate legislative body are to be included in the collective bargaining conducted
23 under the Missouri emergency response personnel strike prevention and arbitration act,
24 the exclusive bargaining representative shall send a written request to meet and collectively
25 bargain at least one hundred twenty days before the last day on which funds can be
26 appropriated to cover the period of any contract period which is the subject of collective
27 bargaining.

28 6. If the exclusive bargaining representative and the appropriate legislative body
29 reach an impasse within thirty days of the date negotiations began, all issues at impasse
30 shall be submitted to a panel of arbitrators as provided in this section. The submission of
31 issues to the panel of arbitrators may be delayed for any period of time agreed upon by the
32 exclusive bargaining representative and the appropriate legislative body.

105.546. 1. Before invoking arbitration, the parties shall make every reasonable
2 effort to settle their dispute through good faith collective bargaining. Such effort may
3 include mediation, provided an impartial mediator can be appointed by agreement of the
4 parties. If a mediator is appointed, the mediator's function shall be to assist all parties to
5 reach a voluntary agreement. The mediator may hold separate or joint conferences as the
6 mediator deems expedient to effect a voluntary, amicable, and expeditious adjustment and
7 settlement of the differences and issues between the parties. The mediator shall make no
8 public recommendation on any negotiation issue in connection with the performance of the
9 mediator's service or make any public statement or report which evaluates the merits of
10 the position of the parties. The mediator may recommend or suggest to the parties a
11 proposal or procedure which in the mediator's judgment might lead to a settlement.

12 2. If issues at impasse are to be submitted to a panel of arbiters, the panel shall
13 consist of one arbiter selected by the appropriate legislative body, one arbiter selected by
14 the exclusive bargaining representative, and one arbiter, who shall be an impartial,
15 competent, and reputable person, selected by the other two arbiters. The exclusive
16 bargaining representative and the appropriate legislative body shall select their own
17 arbiter within five days after it is determined that impasse issues are to be submitted to
18 arbitration. The exclusive bargaining representative and the appropriate legislative body
19 shall each send a written notice of the name and address of the arbiter selected by such

20 person to the other party. If the arbiter selected by the exclusive bargaining representative
21 and the arbiter selected by the appropriate legislative body are unable to agree upon a
22 third arbiter, the third arbiter shall be selected in the following manner:

23 (1) The American Arbitration Association shall prepare a list of names of seven
24 persons to act as the third arbiter;

25 (2) The appropriate legislative body and the exclusive bargaining representative
26 shall alternately strike one name from the list until six names have been struck;

27 (3) The person whose name remains shall be the third arbiter.

28

29 The person chosen as the third arbiter shall be the chair of the panel of arbiters. Formal
30 arbitration shall commence within fifteen days of the selection of the chair of the panel of
31 arbiters. Each party shall submit a final offer on each separate unresolved item to the
32 arbitration panel and the other party.

33 3. In making any decision under the impasse procedures authorized by this section,
34 the arbitrators shall give weight to the following factors:

35 (1) The lawful authority of the public body;

36 (2) Stipulations of the parties;

37 (3) The interests and welfare and tax rates of the citizens;

38 (4) The financial ability of the public body to meet the costs of any items to be
39 included in the contract;

40 (5) Comparison of wages, hours, and terms and conditions of employment of the
41 employees involved in the arbitration proceedings with the wages, hours, and terms and
42 conditions of employment of other persons performing similar services in the public and
43 private sectors in the same area;

44 (6) The average consumer prices for goods and services, commonly known as the
45 "cost of living" or the consumer price index;

46 (7) The overall compensation presently received by the employees involved in the
47 arbitration, including, but not limited to, wages, health and life insurance, vacations,
48 holidays, and similar benefits;

49 (8) Changes in any of the foregoing circumstances during the pendency of the
50 arbitration proceeding;

51 (9) The effect of an agreement on the ability of the public body to provide public
52 services at current levels;

53 (10) Such other factors which are normally or traditionally taken into consideration
54 in the determination of wages, hours, and terms and conditions of employment through
55 voluntary collective bargaining, mediation, fact finding, arbitration, or otherwise between

56 the parties, in the public service or in private employment.

57 **4. The arbitration panel may hold hearings, administer oaths, examine witnesses**
58 **and documents, take testimony, and receive evidence. The panel may issue subpoenas as**
59 **provided in section 536.077, RSMo. Within a reasonable time after the conclusion of any**
60 **hearing or the taking of evidence, the panel shall determine that either the final offer of the**
61 **appropriate legislative body or the final offer of the exclusive representative on each**
62 **separate issue shall be incorporated into the final collective bargaining agreement. The**
63 **arbitration panel may not amend the offer of either party on any one issue. The decision**
64 **of the panel shall be deemed to be the collective bargaining agreement between the parties**
65 **and the public body or its designated representatives shall present this agreement to the**
66 **appropriate administrative, legislative, or other governing body in the form of an**
67 **ordinance, order, resolution, bill, or other form required for adoption, modification, or**
68 **rejection.**

69 **5. The cost of arbitration shall be borne equally by the appropriate legislative body**
70 **and exclusive bargaining representative.**

71 **6. Failure of a legislative body to approve a collective bargaining agreement**
72 **submitted to it shall not be in conflict with the good faith bargaining requirements of the**
73 **Missouri emergency response personnel strike prevention and arbitration act.**

105.548. 1. It is unlawful for any bargaining unit subject to the Missouri
2 **emergency response personnel strike prevention and arbitration act to strike. If a strike**
3 **occurs, all employees who participate in the strike shall be automatically terminated and,**
4 **at the conclusion of the strike, may be rehired at the discretion of the employer. Any**
5 **employee who is terminated under this section and is later rehired shall be rehired only**
6 **under the same conditions applicable to an employee who had never been employed by**
7 **such employer or any other public employer, and such rehired employee shall lose all**
8 **seniority, tenure, and pay grade steps derived by virtue of the employee's past employment,**
9 **and may only gain such seniority, tenure, and pay grade steps in the same manner as any**
10 **new employee with no prior experience. The provisions of this section regarding**
11 **termination and hiring of employees shall not be part of the negotiated settlement of any**
12 **strike.**

13 **2. In addition to provisions of subsection 1 of this section, the employer or employee**
14 **organization may institute in the circuit court of jurisdiction where the strike occurs an**
15 **action for injunctive relief. Where an employee or an employee organization willfully**
16 **disobeys a lawful order of the court of competent jurisdiction issued for a violation of the**
17 **Missouri emergency response personnel strike prevention and arbitration act, the**
18 **punishment for each day that the contempt persists may be a fine as determined by the**

19 court. The court may fine or imprison, or both fine and imprison, a striking employee who
20 disobeys an injunction.

21 3. Any labor organization which is certified as the exclusive representative of the
22 employees of an appropriate unit and which thereafter is found to have ordered, called for,
23 supported, or participated in a strike by the employees in a bargaining unit shall, upon
24 such action, forfeit its status as the exclusive representative of such employees for a period
25 of three years. The forfeiture of status as the exclusive representative of the employees in
26 a bargaining unit may not be waived by, or become the subject of, any collective
27 bargaining agreement.

105.550. 1. The provisions of the Missouri emergency response personnel strike
2 prevention and arbitration act may be adopted by any political subdivision to which the
3 Missouri emergency response personnel strike prevention and arbitration act applies in
4 either of the following methods:

5 (1) The appropriate legislative body may adopt the Missouri emergency response
6 personnel strike prevention and arbitration act by legislative action in the form of a
7 resolution, order, or ordinance; or

8 (2) Upon receiving a petition signed by the lesser of five percent, or twenty
9 thousand, of the registered voters voting in the last preceding general election in the
10 political subdivision, the appropriate governing body of the political subdivision shall
11 submit the question to the voters at the next regular election in the political subdivision.
12 If a majority of the votes cast at the election vote in favor of the adoption of the Missouri
13 emergency response personnel strike prevention and arbitration act, then the governing
14 body shall place the Missouri emergency response personnel strike prevention and
15 arbitration act into effect within thirty days after the beginning of the first fiscal year of
16 the political subdivision after the election. The question shall be submitted to the voters
17 in substantially the following form:

18
19 Shall (Insert name of political subdivision) adopt the provisions of state law which
20 are applicable to emergency response personnel, which allow collective bargaining if a
21 majority of the affected employees favor representation by an employee labor organization
22 and which preserve the prohibition of strikes and penalties therefor?

23 YES NO

24 2. The Missouri emergency response personnel strike prevention and arbitration
25 act may be repealed in any political subdivision in which the Missouri emergency response
26 personnel strike prevention and arbitration act have been in effect for a period of at least
27 one year, if a petition is signed by the lesser of five percent or twenty thousand of the

28 registered voters voting in the last preceding general election in the political subdivision
 29 calling for an election to repeal the adoption of the Missouri emergency response personnel
 30 strike prevention and arbitration act. The appropriate governing body of the political
 31 subdivision shall submit the question to the voters at the next regular election in the
 32 political subdivision. If a majority of the votes cast at the election vote in favor of the repeal
 33 of the Missouri emergency response personnel strike prevention and arbitration act, then
 34 the Missouri emergency response personnel strike prevention and arbitration act shall
 35 become void as to the political subdivision. The question shall be submitted to the voters
 36 in substantially the following form:

37

38 Shall (Insert name of political subdivision) repeal the adoption of the provisions
 39 of state law which are applicable to emergency response personnel, which allow for
 40 collective bargaining if a majority of the affected employees favor representation by an
 41 employee labor organization and which preserve the prohibition of strikes and provides
 42 penalties therefor?

43

YES

NO

44

45 3. Upon adoption of the Missouri emergency response personnel strike prevention
 46 and arbitration act by any political subdivision in this state, emergency response personnel,
 47 through an exclusive bargaining representative, shall have the right to bargain collectively
 48 with their appropriate legislative body as to wages, hours, working conditions and other
 49 terms and conditions of employment. If the Missouri emergency response personnel strike
 50 prevention and arbitration act is adopted under this section, this section shall be applicable
 51 to the political subdivision, notwithstanding the fact that the political subdivision, either
 52 before or after the adoption of the Missouri emergency response personnel strike
 53 prevention and arbitration act has adopted or adopts a home rule charter.

53

54 4. If an election has been held in any political subdivision where the question was
 55 submitted for either the adoption or repeal of the adoption of the Missouri emergency
 56 response personnel strike prevention and arbitration act, the same question shall not be
 57 submitted to the voters at another election for at least one year after an election where the
 question had been submitted.