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Austin, Texas

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December 4, 2020

The Honorable Greg Abbott
Governor of Texas
Austin, Texas

Re: Legislative Council bill draft removing APD from Austin City Council oversight and placing it as a division within DPS

Dear Governor Abbott:

Work has been completed on a Legislative Council bill draft of the parliamentary solution we shared with you in August that would remove the Austin Police Department from Austin City Council oversight and place it as a division within the Texas Department of Public Safety. The draft was reviewed extensively by the Council's Legal Division. The Council's bill draft is as follows:

By: _____

____.B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to the provision of law enforcement services in certain municipalities by the Department of Public Safety.

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

SECTION 1. Chapter 411, Government Code, is amended by adding Subchapter S to read as follows:

SUBCHAPTER S. LAW ENFORCEMENT SERVICES IN CERTAIN MUNICIPALITIES

Sec. 411.541. APPLICABILITY. This subchapter applies only to a municipality:

(1) with a population of 950,000 or more;

(2) with a ratio of less than two sworn police officers per 1,000 residents; and

(3) for which the governor has issued a written determination under Section 411.542.

Sec. 411.542. DETERMINATION OF PUBLIC SAFETY THREAT DUE TO INSUFFICIENT FUNDING. If the governor determines that the safety of a municipality's residents is threatened because the municipality is providing insufficient municipal resources for public safety, the governor may issue a determination to that effect.

Sec. 411.543. PROVISION OF LAW ENFORCEMENT SERVICES BY DEPARTMENT. The department shall provide law enforcement services in a municipality to which this subchapter applies. The municipality shall reimburse the department the cost of providing the law enforcement services.

Sec. 411.544. CONTRACT REQUIRED. (a) Not later than the first day of a municipality's fiscal year following a determination by the governor under Section 411.542, the municipality shall enter into a contract with the department governing the provision of law enforcement services in the municipality on terms determined solely by the director.

(b) The contract required by Subsection (a) must:

(1) provide for the transfer from the municipality to the department of all personnel, property, and liabilities that relate to the municipality's provision of law enforcement services, including all employees, equipment, facilities, contracts, and other assets;

(2) require that the personnel and property described by Subdivision (1):

(A) be organized as a unique division within the department as required by Section 411.546; and

(B) benefit the residents of the municipality through the department's provision of law enforcement services to the residents of the municipality; and

(3) subject to later modification by the commission or the director, require the department to administer the division as similarly in manner as practicable to the manner in which the municipality's law enforcement agency was administered immediately before the transfer, including operating the division in accordance with:

(A) internal policies and procedures of the municipal law enforcement agency that applied immediately before the transfer;

(B) positions, wages, leave, and other terms of employment that applied immediately before the transfer; and

(C) if applicable, civil service laws such as Chapter 143, Local Government Code, as those laws applied immediately before the transfer.

(c) The legislature finds that a contract for law enforcement services under this subchapter serves a public purpose of the contracting municipality.

Sec. 411.545. CONTINUATION OF CERTAIN CIVIL SERVICE LAWS. (a) If civil service laws, such as Chapter 143, Local Government Code, applied immediately before the transfer to any employee subject to the transfer:

(1) the commission:

(A) shall adopt rules that:

(i) are substantially equivalent to the civil service laws; and

(ii) apply only to the employees to whom the civil service laws applied immediately before the transfer; and

(B) may modify the rules described by Paragraph (A); and

(2) the department shall establish a civil service commission for a division created under Section 411.546 and the director shall appoint initial members to that commission not later than the 60th day after the effective date of the contract transferring the employees.

(b) To the extent of any conflict, a rule adopted under this section prevails over another law governing the terms of employment for an employee of the department, including laws governing wages, salary, hours, leave, position classification, promotion, and discipline.

Sec. 411.546. SEPARATE DIVISION OF DEPARTMENT. (a) The department shall create a separate division within the department to provide law enforcement services to each municipality to which this subchapter applies.

(b) The former chief administrative officer of the transferred law enforcement agency becomes the chief administrative officer of the division created under this section, subject to the control of the director.

Sec. 411.547. TRANSFER OF CERTAIN RETIREMENT SYSTEMS. (a) If before the transfer the sworn police officers of a municipality transferred to the department under this subchapter were by law members of a retirement system that applied primarily to the sworn police officers and not any other employees of the municipality, on the transfer:

(1) notwithstanding Subtitle B, Title 8, the employment of the officers is not a position with a department, commission, board, agency, or institution of the state for purposes of that subtitle;

(2) the commission and the board of trustees of the retirement system shall enter into a memorandum of understanding regarding each entity's responsibilities for the continued administration of the system in the same manner, to the extent feasible, as the system was administered by the board and the municipality;

(3) the department shall assume the duties and liabilities of the municipality under the law establishing the retirement system and, unless context requires otherwise, a reference in that law to:

(A) the municipality as a legal entity means the department;

(B) the governing body of the municipality means the commission;

(C) any other official or employee of the municipality means an official or employee of the department with substantially equivalent qualifications, as jointly determined in the memorandum of understanding adopted under Subdivision (2); and

(D) the police department of the municipality means the division created under Section 411.546;

(4) the commission and the board of trustees of the retirement system shall jointly adopt any rules necessary to implement the assumption of duties and liabilities described by Subdivision (3), and the commission and the board may liberally construe a law described by Subdivision (3) in adopting the rules for the purpose of ensuring the continued administration of the retirement system;

(5) the commission shall enter into a memorandum of understanding with the comptroller and any other state agency the commission determines necessary for:

(A) the continued administration of a retirement system transferred under this section; and

(B) the administration of benefits for an employee whose change in employment status results in changing membership between a retirement system transferred under this section and another retirement system;

(6) an agency designated by the commission under Subdivision (5) shall provide the assistance necessary to ensure the continued administration of a retirement system as described by Subdivision (5)(A) and the transition of employees between retirement systems as described by Subdivision (5)(B); and

(7) the term of a member of the board of trustees of a retirement system transferred under this section who is a member of the board by reason of the member's status as an official or employee of the municipality, other than sworn police officer, expires the date the contract required by this subchapter is effective, and the commission shall appoint members to

those vacancies who are officials or employees of the department and whose qualifications are substantially similar to the members whose terms expired under this subdivision.

(b) An employee transferred under this subchapter who is not covered by Subsection (a) holds a position with a department, commission, board, agency, or institution of the state for purposes of Subtitle B, Title 8.

Sec. 411.548. TRUST FUND FOR REIMBURSEMENT PAYMENTS. (a) The department shall deposit money received as reimbursement for providing law enforcement services in a municipality in a trust fund held outside the treasury by the comptroller and administered by the commission.

(b) The department may spend money in the fund without appropriation. Interest and income from the assets of the fund shall be credited to and deposited in the fund.

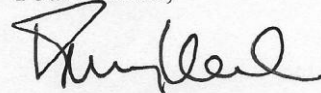
Sec. 411.549. PROVISION OF LAW ENFORCEMENT SERVICES BY MUNICIPALITY PROHIBITED. A municipality may not provide law enforcement services after contracting for law enforcement services with the department under Section 411.544.

SECTION 2. The changes in law made by this Act may not be construed to impair an obligation under a contract entered into before the effective date of this Act. A political subdivision may fulfill the subdivision's obligations under a contract entered into before that date but may not extend such a contract beyond the contract's original term.

SECTION 3. This Act takes effect September 1, 2021

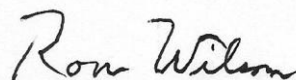
We hope this will prove helpful to you in the upcoming session in your consideration of potential legislative solutions to the public safety problems being caused by the Austin City Council. As always, please call on us if we can be of any further assistance to you.

Your friends,



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