

By: Whitmire

S.B. No. 1448

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the right of certain municipalities to maintain local  
3 control over wages, hours, and other terms of employment of certain  
4 municipal employees.

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

6 SECTION 1. Chapter 143, Local Government Code, is amended  
7 by adding Subchapter K to read as follows:

8 SUBCHAPTER K. LOCAL CONTROL OF MUNICIPAL EMPLOYMENT MATTERS IN  
9 MUNICIPALITIES WITH POPULATION OF 1.9 MILLION OR MORE

10 Sec. 143.401. APPLICATION. (a) This subchapter applies  
11 only to a municipality with a population of 1.9 million or more.

12 (b) This subchapter does not apply to:

13 (1) firefighters or police officers who are covered by  
14 Subchapter H, I, or J or by Chapter 174; or

15 (2) an employee association in which those employees  
16 participate.

17 Sec. 143.402. DEFINITIONS. In this subchapter:

18 (1) "Association" means an organization in which  
19 municipal employees participate, that exists wholly or partly for  
20 the purpose of dealing with one or more public or private employers  
21 concerning grievances, labor disputes, wages, rates of pay, hours  
22 of employment, or working conditions affecting public employees,  
23 and whose members pay dues by means of an automatic payroll  
24 deduction.

1           (2) "Covered employee" means an employee of the  
2 municipality, excluding a department head and a firefighter or  
3 police officer covered by Subchapter H, I, or J or by Chapter 174.

4           (3) "Public employer" means any municipality or  
5 agency, board, commission, or political subdivision created and  
6 controlled by a municipality that is required to establish the  
7 wages, salaries, rates of pay, hours of employment, working  
8 conditions, and other terms of employment of public employees.

9           Sec. 143.403. GENERAL PROVISIONS RELATING TO AGREEMENTS,  
10 RECOGNITION, AND STRIKES. (a) A municipality may not be denied  
11 local control over wages, salaries, rates of pay, hours of  
12 employment, other terms or conditions of employment, or other  
13 personnel issues on which the public employer and an association  
14 recognized as the sole and exclusive bargaining agent for all  
15 covered employees agree. A term on which the public employer and  
16 the association do not agree is governed by the applicable  
17 statutes, local ordinances, and civil service rules. An agreement  
18 between the public employer and an association must be reduced to  
19 writing. This subchapter does not:

20           (1) require the public employer and the association to  
21 meet and confer or reach an agreement on any issue; or

22           (2) authorize an agreement regarding pension or  
23 pension-related matters governed by Chapter 88, Acts of the 77th  
24 Legislature, Regular Session, 2001 (Article 6243h, Vernon's Texas  
25 Civil Statutes), or a successor statute.

26           (b) A public employer and an association recognized under  
27 this subchapter as a sole and exclusive bargaining agent may meet

1 and confer only if the association does not advocate the illegal  
2 right to strike by public employees.

3 (c) A municipal employee may not engage in a strike or  
4 organized work stoppage against this state or a political  
5 subdivision of this state. An employee who participates in a strike  
6 forfeits all civil service rights, reemployment rights, and other  
7 rights, benefits, or privileges the employee enjoys as a result of  
8 the employee's employment or previous employment with the  
9 municipality. This subsection does not affect the right of a person  
10 to cease employment if the person is not acting in concert with  
11 other employees.

12 Sec. 143.404. RECOGNITION OF ASSOCIATION. (a) A public  
13 employer may recognize an association that submits a petition  
14 signed by a majority of the covered employees, excluding any  
15 department head and assistant department head in the rank or  
16 classification immediately below that of the department head, as  
17 the sole and exclusive bargaining agent for all of the covered  
18 employees.

19 (b) An association may submit a petition requesting an  
20 election to determine whether an association is the sole and  
21 exclusive representative of the covered employees. If the petition  
22 is signed by 30 percent of the covered employees and the public  
23 employer certifies to the municipality the number of employees  
24 signing the petition, there is a question of whether an association  
25 is the sole and exclusive representative of the covered employees  
26 that must be resolved by a fair election conducted according to  
27 procedures on which the parties agree. If the parties are unable to

1 agree on election procedures, either party may request the American  
2 Arbitration Association to conduct the election and to certify the  
3 results. The association that receives a majority of the votes cast  
4 at the election is the sole and exclusive representative of the  
5 covered employees. Certification of the results of an election  
6 under this subsection resolves the question concerning  
7 representation. The association that submits the petition shall  
8 pay the costs of the election, except that if two or more  
9 associations seeking recognition as the sole and exclusive  
10 bargaining agent submit petitions signed by 30 percent or more of  
11 the covered employees, the associations shall share equally the  
12 costs of the election.

13 (c) The municipality shall designate a team to represent the  
14 public employer as its sole and exclusive bargaining agent.

15 Sec. 143.405. OPEN RECORDS REQUIRED. An agreement made  
16 under this subchapter is a public record for purposes of Chapter  
17 552, Government Code. The agreement and any document prepared and  
18 used by the municipality in connection with the agreement are  
19 available to the public under the open records law, Chapter 552,  
20 Government Code, only after the agreement is ratified by the  
21 municipality's governing body. This section does not affect the  
22 application of Subchapter C, Chapter 552, Government Code, to a  
23 document prepared and used by the municipality in connection with  
24 the agreement.

25 Sec. 143.406. ENFORCEABILITY OF AGREEMENT. (a) A written  
26 agreement made under this subchapter between a public employer and  
27 an association is binding on the public employer, the association,

1 and employees covered by the agreement if:

2 (1) the municipality's governing body ratifies the  
3 agreement by a majority vote; and

4 (2) the applicable association ratifies the agreement  
5 by a majority vote of its members voting in an election by secret  
6 ballot.

7 (b) An agreement ratified as described by Subsection (a) may  
8 establish a procedure by which the parties agree to resolve  
9 disputes related to a right, duty, or obligation provided by the  
10 agreement, including binding arbitration on interpretation of the  
11 agreement.

12 (c) The district court of the judicial district in which the  
13 municipality is located has full authority and jurisdiction on the  
14 application of either party aggrieved by an act or omission of the  
15 other party related to a right, duty, or obligation provided by a  
16 written agreement ratified as described by Subsection (a). The  
17 court may issue proper restraining orders, temporary and permanent  
18 injunctions, or any other writ, order, or process, including a  
19 contempt order, that is appropriate to enforce the agreement.

20 Sec. 143.407. AGREEMENT SUPERSEDES CONFLICTING  
21 PROVISIONS. (a) An agreement under this subchapter supersedes a  
22 previous statute concerning wages, salaries, rates of pay, hours of  
23 employment, or other terms or conditions of employment, other than  
24 pension and pension-related matters, to the extent of any conflict  
25 with the statute.

26 (b) An agreement under this subchapter preempts any  
27 contrary statute, executive order, local ordinance, or rule adopted

1 by the state or a political subdivision or agent of the state,  
2 including a personnel board, a civil service commission, or a  
3 home-rule municipality, other than a statute, order, ordinance, or  
4 rule regarding pension or pension-related matters.

5 (c) An agreement under this subchapter may not diminish or  
6 qualify any right, benefit, or privilege of an employee under this  
7 subchapter or other law unless approved by a majority vote by secret  
8 ballot of the members of the association recognized as a sole and  
9 exclusive bargaining agent.

10 Sec. 143.408. REPEAL OF AGREEMENT BY ELECTORATE. Not later  
11 than the 45th day after the date an agreement is ratified by both  
12 the municipality and the association, a petition signed by at least  
13 10 percent of the registered voters of the municipality may be  
14 presented to the municipal secretary calling an election for the  
15 repeal of the agreement. On receipt of the petition by the  
16 municipal secretary, the governing body shall reconsider the  
17 agreement and either repeal the agreement or call an election of the  
18 qualified voters to determine if they desire to repeal the  
19 agreement. The election shall be called for the next municipal  
20 election or a special election called by the governing body for that  
21 purpose. If at the election a majority of the votes are cast in  
22 favor of the repeal of the adoption of the agreement, the agreement  
23 is void. The ballot shall be printed to permit voting for or  
24 against the proposition: "Repeal of the adoption of the agreement  
25 ratified by the municipality and the \_\_\_\_\_ (municipal  
26 employee) association concerning wages, salaries, rates of pay,  
27 hours of employment, and other terms and conditions of employment."

1           Sec. 143.409. PROTECTED RIGHTS OF INDIVIDUAL  
2 EMPLOYEES. An agreement may not interfere with the right of a  
3 member of an association to pursue allegations of discrimination  
4 based on race, creed, color, national origin, religion, age, sex,  
5 or disability with the Commission on Human Rights or the Equal  
6 Employment Opportunity Commission or to pursue affirmative action  
7 litigation.

8           SECTION 2. This Act takes effect September 1, 2003.