

BILL ANALYSIS

S.B. 706
By: Barrientos
Urban Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Historically, the Texas Legislature has prohibited state and political subdivisions from recognizing a labor organization and negotiating a collective bargaining contract with public employees. However, in recent years, the legislature has granted "meet and confer" rights to certain municipal departments. These rights allow municipal employees to negotiate agreements with their employers regarding employment issues such as wages, staffing, benefits, equipment, and training. This practice has been successful because, unlike collective bargaining requirements, "meet and confer" provisions are permissive and neither the employee nor the employer are mandated to meet or reach an agreement.

S.B. 706 allows an emergency medical services (EMS) personnel association in a municipality with a population of over 460,000 having a city manager form of government and that employs EMS personnel in a department other than a fire department to "meet and confer" with the public employer concerning wage and other employment conditions.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Chapter 142, Local Government Code, by designating Sections 142.001-142.013 as Subchapter A and adding a heading for Subchapter A, to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Amends Chapter 142, Local Government Code, by adding Subchapter B, as follows:

SUBCHAPTER B. LOCAL CONTROL OF EMERGENCY MEDICAL SERVICES PERSONNEL EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES

Sec. 142.051. **APPLICABILITY.** Provides that this subchapter applies only to certain municipalities.

Sec. 142.052. **DEFINITIONS.** Defines "association," "emergency medical services personnel," and "public employer."

Sec. 142.053. **PETITION FOR RECOGNITION: ELECTION OR ACTION BY GOVERNING BODY.** (a) Authorizes the governing body of a municipality to take certain actions no later than 30th day after the date the governing body receives from an association a petition signed by the majority of all emergency medical services personnel, excluding the head of the emergency medical services department for the municipality and the other employees excluded under Section 142.058, that requests recognition of the association as the sole and exclusive bargaining agent for all the emergency medical services personnel employed by the municipality other than the excluded employees.

(b) Authorizes the governing body of a municipality, if the governing body orders a certification election under Subsection (a)(2) and the association named in the

petition is certified to represent a majority of the affected emergency medical services personnel, to order an election by the voters in the municipality under Section 142.055 regarding whether a public employer may meet and confer under this subchapter, no later than the 30th day after the date that results of that election are certified.

Sec. 142.054. CERTIFICATION ELECTION. (a) Requires a certification election ordered under Section 142.053(a)(2) to determine whether an association represents a majority of the covered emergency medical services personnel, except as provided by Subsection (b), to be conducted according to procedures agreeable to the parties.

(b) Authorizes either party, if the parties are unable to agree on procedures for the certification election, to request the American Arbitration Association to conduct the election and to certify the results of the election.

(c) Provides that certification of the results of an election under this section resolves the question concerning representation.

(d) Requires each association named in the valid petitions to equally share the costs of the election.

Sec. 142.055. ELECTION TO AUTHORIZE OPERATING UNDER THIS SUBCHAPTER. (a) Authorizes the governing body of a municipality that receives a petition for recognition under Section 142.053 to order an election to determine whether a public employer may meet and confer under this subchapter.

(b) Requires an election ordered under this section to be held on the first authorized uniform election date prescribed by the Chapter 41, Election Code, that occurs after the date the governing of the municipality orders the election and that allows sufficient time to comply with other requirements of law.

(c) Requires the ballot for an election ordered under this section to be printed to allow voting for or against the proposition and contain specific text.

(d) Requires an election under this section to be held and the returns prepared and canvassed in conformity with the Election Code.

(e) Authorizes a municipality to operate under the other provisions of this subchapter only if a majority of the votes cast at the election favor the proposition.

(f) Prohibits an association, if an election authorized under this section is held, from submitting a petition for recognition to the governing body of the municipality under Section 142.053 before the first anniversary of the date of the election.

Sec. 142.056. GENERAL PROVISIONS RELATING TO AGREEMENTS. (a) Prohibits a municipality from being denied local control over certain personnel issues on which the public employer and an association that is recognized as the sole and exclusive bargaining agent under Section 142.053(a)(1) or 142.054 for all emergency medical services personnel in the municipality agree. Provides that applicable statutes, local ordinances, and civil service rules govern a term or condition of employment on which the public employer and the association do not agree.

(b) Requires an agreement under this subchapter to be written.

(c) Provides that this subchapter does not require the public employer and an association to meet and confer or reach an agreement on any issue.

Sec. 142.057. STRIKES PROHIBITED. (a) Authorizes a public employer and an association recognized as the sole and exclusive bargaining agent under Section

142.053(a)(1) or 142.054 to meet and confer only if the association does not advocate the illegal right to strike by public employees.

(b) Prohibits emergency medical services personnel of a municipality from engaging in a strike or organized work stoppage against this state or a political subdivision of this state.

(c) Provides that emergency medical services personnel who participate in a strike forfeit all civil service rights, reemployment rights, and other rights, benefits, or privileges enjoyed as a result of employment or previous employment with the municipality.

(d) Provides that this section does not affect the right of a person to cease employment if the person is not acting in concert with other emergency medical services personnel.

Sec. 142.058. WITHDRAWAL OF RECOGNITION OF EMERGENCY MEDICAL SERVICES PERSONNEL ASSOCIATION. Requires a public employer in a municipality that chooses to meet and confer under this subchapter to recognize an association that is recognized under Section 142.053(a)(1) or 142.054 by a majority of the paid emergency medical services personnel in the municipality, excluding the head of the emergency medical services department and assistant department heads in the rank or classification immediately below that of the department head, as the sole and exclusive bargaining agent for all of the covered emergency medical services personnel until recognition of the association is withdrawn by a majority of the covered emergency medical services personnel.

Sec. 142.059. SELECTION OF BARGAINING AGENTS. Requires the public employer's manager or chief executive, as appropriate, and the head of the emergency medical services department to designate a group of persons to represent the public employer as its sole and exclusive bargaining agent.

Sec. 142.060. OPEN RECORDS REQUIRED. Sets forth certain requirements for open records for agreements and any document prepared and used by the municipality in connection with a proposed agreement.

Sec. 142.061. RATIFICATION AND ENFORCEABILITY OF AGREEMENT. Provides that an agreement made under this subchapter between a public employer and an association is binding on the public employer, the association, and the emergency medical services personnel covered by the agreement if certain procedures are followed.

(b) Authorizes an agreement ratified as described by Subsection (a) to establish a procedure by which the parties agree to resolve disputes related to a right, duty, or obligation provided by the agreement, including binding arbitration on interpretation of the agreement.

(c) Provides that the state district court of the judicial district in which the municipality is located has jurisdiction to hear and resolve a dispute under the ratified agreement on the application of a party to the agreement aggrieved by an act or omission of the other party. Authorizes the court to issue proper restraining orders, temporary and permanent injunctions, or any other writ, order, or process, including a contempt order, that is appropriate to enforce the agreement.

Sec. 142.062. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. (a) Provides that an agreement under this subchapter supersedes a previous statute concerning certain terms and conditions of employment to the extent of any conflict with the statute.

(b) Provides that an agreement under this subchapter preempts any contrary executive order, local ordinance, or rule adopted by this state or a political

subdivision or agent of this state, including a personnel board, a civil service commission, or a municipality.

(c) Prohibits an agreement under this subchapter from diminishing or qualifying any right, benefit, or privilege of an employee under this chapter or other law unless approved by a majority vote by secret ballot of the members of the association recognized under Section 142.053(a)(1) or 142.054 at which only association members who are eligible to sign a petition under Section 142.053 may vote.

Sec. 142.063. **REPEAL OF AGREEMENT BY ELECTORATE.** (a) Authorizes a petition signed by at least 10 percent of the qualified voters of the municipality, no later than the 45th day after the date an agreement is ratified by both the municipality and the association, to be presented to the municipal secretary calling for an election to repeal the agreement.

(b) Requires the governing board of the municipality, on receipt by the municipal secretary of a petition described by Subsection (a), to reconsider the agreement and either repeal the agreement or call an election of the qualified voters of the municipality to determine if the voters favor repealing the agreement. Requires the election to be called for the next election held in the municipality that allows sufficient time to comply with applicable provisions of law or at a special election called by the governing body for that purpose.

(c) Provides that if at the election a majority of the votes cast favor repeal of the adoption of the agreement, the agreement is void.

(d) Requires the ballot for an election under this section to be printed to permit voting for or against the proposition and contain certain text.

Sec. 142.064. **PROTECTED RIGHTS OF INDIVIDUAL EMPLOYEES.** (a) Authorizes a member of the association, for the purpose of any disciplinary appeal, to choose to be represented by any person of the member's choice or by the association.

(b) Prohibits an agreement from interfering with the right of a member of the association to pursue allegations of discrimination based on race, creed, color, national origin, religion, age, sex, or disability with the civil rights division of the Texas Workforce Commission or the federal Equal Employment Opportunity Commission or to pursue affirmative action litigation.

Sec. 142.065. **BINDING INTEREST ARBITRATION.** (a) Authorizes a municipality to be required to submit to binding interest arbitration only if approved by a majority of those voting in a public referendum conducted in accordance with the municipality's charter.

(b) Provides that Subsection (a) does not affect any disciplinary arbitration or arbitration provision in a ratified agreement.

SECTION 3. Effective date: upon passage or September 1, 2005.

EFFECTIVE DATE

This Act takes effect September 1, 2005 or immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution.