

By: Talton, Bailey, Reyna, Pena, Hughes,
et al.

H.B. No. 304

A BILL TO BE ENTITLED

AN ACT

relating to conditions of employment for police officers employed
by certain municipalities.

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

SECTION 1. Chapter 142, Local Government Code, is amended
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. Chapter 142, Local Government Code, is amended
by adding Subchapter B to read as follows:

SUBCHAPTER B. LOCAL CONTROL OF POLICE OFFICER EMPLOYMENT MATTERS

IN CERTAIN MUNICIPALITIES

Sec. 142.051. APPLICABILITY. (a) Except as provided by
Subsection (b), this subchapter applies only to a municipality:

(1) with a population of 50,000 or more; or

(2) that has adopted Chapter 143.

(b) This subchapter does not apply to a municipality that:

(1) has adopted Chapter 174;

(2) is covered by Subchapter H, I, or J, Chapter 143;

or

(3) has a population of one million or more and has not
adopted Chapter 143.

Sec. 142.052. DEFINITIONS. In this subchapter:

(1) "Police officer" means a person who is a peace

1 officer under Article 2.12, Code of Criminal Procedure, or other
2 law, and who is employed by a municipality.

3 (2) "Police officers association" means an employee
4 organization in which police officers employed by a municipality
5 participate that exists for the purpose, in whole or in part, of
6 dealing with the municipality or public employer concerning
7 grievances, labor disputes, wages, rates of pay, hours of work, or
8 conditions of work affecting police officers.

9 (3) "Public employer" means a municipality or a law
10 enforcement agency of the municipality that is required to
11 establish the wages, salaries, rates of pay, hours of work, working
12 conditions, and other terms and conditions of employment of police
13 officers employed by the municipality.

14 Sec. 142.053. PETITION FOR RECOGNITION: ELECTION OR ACTION
15 BY GOVERNING BODY. (a) Not later than the 30th day after the date
16 the governing body of a municipality receives from a police
17 officers association a petition signed by the majority of all
18 police officers, excluding the head of the law enforcement agency
19 for the municipality and excluding the employees exempt under
20 Section 142.058(b), that requests recognition of the association as
21 the sole and exclusive bargaining agent for all the police officers
22 employed by the municipality, excluding the head of the law
23 enforcement agency for the municipality and excluding the exempt
24 employees, the governing body shall:

25 (1) grant recognition of the association as requested
26 in the petition and find that a public employer may meet and confer
27 under this subchapter without conducting an election by the voters

1 in the municipality under Section 142.055;

2 (2) defer granting recognition of the association and
3 order an election by the voters in the municipality under Section
4 142.055 regarding whether a public employer may meet and confer
5 under this subchapter; or

6 (3) order a certification election under Section
7 142.054 to determine whether the association represents a majority
8 of the affected police officers.

9 (b) If the governing body of a municipality orders a
10 certification election under Subsection (a)(3) and the association
11 named in the petition is certified to represent a majority of the
12 affected police officers of the municipality, the governing body
13 shall, not later than the 30th day after the date that results of
14 that election are certified:

15 (1) grant recognition of the association as requested
16 in the petition for recognition and find that a public employer may
17 meet and confer under this subchapter without conducting an
18 election by the voters in the municipality under Section 142.055;
19 or

20 (2) defer granting recognition of the association and
21 order an election by the voters in the municipality under Section
22 142.055 regarding whether a public employer may meet and confer
23 under this subchapter.

24 Sec. 142.054. CERTIFICATION ELECTION. (a) Except as
25 provided by Subsection (b), a certification election ordered under
26 Section 142.053(a)(3) to determine whether a police officers
27 association represents a majority of the covered police officers

1 shall be conducted according to procedures agreeable to the
2 parties.

3 (b) If the parties are unable to agree on procedures for the
4 certification election, either party may request the American
5 Arbitration Association to conduct the election and to certify the
6 results of the election.

7 (c) Certification of the results of an election under this
8 section resolves the question concerning representation.

9 (d) The association is liable for the expenses of the
10 certification election, except that if two or more associations
11 seeking recognition as the sole and exclusive bargaining agent
12 submit a petition signed by at least 30 percent of the police
13 officers eligible to sign the petition for recognition, all the
14 associations named in any petition shall share equally the costs of
15 the election.

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

21 (b) An election ordered under this section must be held as
22 part of the next regularly scheduled general election for municipal
23 officials that is held after the date the governing body of the
24 municipality orders the election and that allows sufficient time to
25 prepare the ballot in compliance with other requirements of law.

26 (c) The ballot for an election ordered under this section
27 shall be printed to permit voting for or against the proposition:

1 "Authorizing _____ (name of the municipality) to operate under
2 the state law allowing a municipality to meet and confer and make
3 agreements with the association representing municipal police
4 officers as provided by state law, preserving the prohibition
5 against strikes and organized work stoppages, and providing
6 penalties for strikes and organized work stoppages."

7 (d) An election called under this section must be held and
8 the returns prepared and canvassed in conformity with the Election
9 Code.

10 (e) If an election authorized under this section is held,
11 the municipality may operate under the other provisions of this
12 subchapter only if a majority of the votes cast at the election
13 favor the proposition.

14 (f) If an election authorized under this section is held, an
15 association may not submit a petition for recognition to the
16 governing body of the municipality under Section 142.053 before the
17 second anniversary of the date of the election.

18 Sec. 142.056. CHANGE OR MODIFICATION OF RECOGNITION. (a)
19 The police officers may modify or change the recognition of the
20 association granted under this subchapter by filing with the
21 governing body of the municipality a petition signed by a majority
22 of all covered police officers.

23 (b) The governing body of the municipality may:

24 (1) recognize the change or modification as provided
25 by the petition; or

26 (2) order a certification election in accordance with
27 Section 142.054 regarding whether to do so.

1 Sec. 142.057. STRIKES PROHIBITED. (a) A police officer
2 employed by a municipality may not engage in a strike or organized
3 work stoppage against this state or the municipality.

4 (b) A police officer who participates in a strike forfeits
5 any civil service rights, reemployment rights, and other rights,
6 benefits, or privileges the police officer may have as a result of
7 the officer's employment or prior employment with the municipality.

8 (c) This section does not affect the right of a person to
9 cease work if the person is not acting in concert with others in an
10 organized work stoppage.

11 Sec. 142.058. RECOGNITION OF POLICE OFFICERS ASSOCIATION.

12 (a) A public employer in a municipality that chooses to meet and
13 confer under this subchapter shall recognize an association that is
14 recognized under Section 142.053 or 142.054 as the sole and
15 exclusive bargaining agent for the covered police officers
16 described in the petition for recognition, excluding the head of
17 the law enforcement agency and excluding the employees exempt under
18 Subsection (b), in accordance with this subchapter and the
19 petition.

20 (b) For the purposes of Subsection (a), exempt employees are
21 the employees appointed by the head of the law enforcement agency of
22 the municipality under Section 143.014 or that are exempt by the
23 mutual agreement of the recognized police officers association and
24 the public employer.

25 (c) The public employer shall recognize the police officers
26 association until recognition of the association is withdrawn, in
27 accordance with Section 142.056, by a majority of the police

1 officers eligible to sign a petition for recognition.

2 Sec. 142.059. GENERAL PROVISIONS RELATING TO AGREEMENTS.

3 (a) A municipality acting under this subchapter may not be denied
4 local control over the wages, salaries, rates of pay, hours of work,
5 or other terms and conditions of employment to the extent the public
6 employer and the police officers association recognized as the sole
7 and exclusive bargaining agent under this subchapter agree as
8 provided by this subchapter, if the agreement is ratified and not
9 withdrawn in accordance with this subchapter. Applicable statutes
10 and applicable local orders, ordinances, and civil service rules
11 apply to an issue not governed by the meet and confer agreement.

12 (b) A meet and confer agreement under this subchapter must
13 be written.

14 (c) This subchapter does not require a public employer or a
15 recognized police officers association to meet and confer on any
16 issue or reach an agreement.

17 (d) A public employer and the recognized police officers
18 association may meet and confer only if the association does not
19 advocate an illegal strike by public employees.

20 (e) While a meet and confer agreement under this subchapter
21 between the public employer and the recognized police officers
22 association is in effect, the public employer may not accept a
23 petition, with regard to the police officers of the municipality
24 requesting an election to adopt:

25 (1) municipal civil service under Chapter 143; or

26 (2) collective bargaining under Chapter 174.

27 Sec. 142.060. SELECTION OF BARGAINING AGENT; BARGAINING

1 UNIT. (a) The public employer's chief executive officer or the
2 chief executive officer's designee shall select one or more persons
3 to represent the public employer as its sole and exclusive
4 bargaining agent to meet and confer on issues related to the wages,
5 hours of employment, and other terms and conditions of employment
6 of police officers by the municipality.

7 (b) A police officers association may designate one or more
8 persons to negotiate or bargain on the association's behalf.

9 (c) A municipality's bargaining unit is composed of all the
10 police officers of the municipality who are not the head of the law
11 enforcement agency or exempt under Section 142.058(b).

12 Sec. 142.061. PROTECTED RIGHTS OF POLICE OFFICER. (a) For
13 any disciplinary appeal, a member of the municipality's bargaining
14 unit may be represented by the police officers association or by any
15 person the member selects.

16 (b) A meet and confer agreement ratified under this
17 subchapter may not interfere with the right of a member of a
18 bargaining unit to pursue allegations of discrimination based on
19 race, creed, color, national origin, religion, age, sex, or
20 disability with the Texas Workforce Commission civil rights
21 division or the federal Equal Employment Opportunity Commission or
22 to pursue affirmative action litigation.

23 Sec. 142.062. OPEN RECORDS. (a) A proposed meet and confer
24 agreement and a document prepared and used by the municipality,
25 including a public employer, in connection with the proposed
26 agreement are available to the public under Chapter 552, Government
27 Code, only after the agreement is ready to be ratified by the

1 governing body of the municipality.

2 (b) This section does not affect the application of
3 Subchapter C, Chapter 552, Government Code, to a document prepared
4 and used in connection with the agreement.

5 Sec. 142.063. OPEN DELIBERATIONS. A deliberation relating
6 to meeting and conferring between a public employer and a police
7 officers association, a deliberation relating to an agreement or
8 proposed agreement under this subchapter by a quorum of a police
9 officers association authorized to meet and confer, or a
10 deliberation by a member of a public employer authorized to meet and
11 confer must be open to the public and comply with state law.

12 Sec. 142.064. RATIFICATION AND ENFORCEABILITY OF
13 AGREEMENT. (a) An agreement under this subchapter is enforceable
14 and binding on the public employer, the recognized police officers
15 association, and the police officers covered by the meet and confer
16 agreement only if:

17 (1) the governing body of the municipality ratified
18 the agreement by a majority vote; and

19 (2) the recognized police officers association
20 ratified the agreement by conducting a secret ballot election at
21 which the majority of the police officers who would be covered by
22 the agreement favored ratifying the agreement.

23 (b) A meet and confer agreement ratified as described by
24 Subsection (a) may establish a procedure by which the parties agree
25 to resolve disputes related to a right, duty, or obligation
26 provided by the agreement, including binding arbitration on a
27 question involving interpretation of the agreement.

1 (c) A state district court of a judicial district in which
2 the municipality is located has jurisdiction to hear and resolve a
3 dispute under the ratified meet and confer agreement on the
4 application of a party to the agreement aggrieved by an action or
5 omission of the other party when the action or omission is related
6 to a right, duty, or obligation provided by the agreement. The
7 court may issue proper restraining orders, temporary and permanent
8 injunctions, or any other writ, order, or process, including
9 contempt orders, that are appropriate to enforcing the agreement.

10 Sec. 142.065. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
11 OPERATE UNDER THIS SUBCHAPTER. (a) The governing body of a
12 municipality that granted recognition of a police officers
13 association under Section 142.053 without conducting an election
14 under Section 142.055 may withdraw recognition of the association
15 by providing to the association not less than 90 days' written
16 notice that:

17 (1) the governing body is withdrawing recognition of
18 the association; and

19 (2) any agreement between the governing body and the
20 association will not be renewed.

21 (b) The governing body of a municipality that granted
22 recognition of a police officers association after conducting an
23 election under Section 142.055 may order an election to determine
24 whether a public employer may continue to meet and confer under this
25 subchapter. The governing body may not order an election under this
26 subsection until the second anniversary of the date of the election
27 under Section 142.055.

1 (c) An election ordered under Subsection (b) must be held
2 as part of the next regularly scheduled general election for
3 municipal officers that occurs after the date the governing body of
4 the municipality orders the election and that allows sufficient
5 time to prepare the ballot in compliance with other requirements of
6 law.

7 (d) The ballot for an election ordered under Subsection (b)
8 shall be printed to allow voting for or against the proposition:
9 "Authorizing _____ (name of the municipality) to continue to
10 operate under the state law allowing a municipality to meet and
11 confer and make agreements with the association representing
12 municipal police officers as provided by state law, preserving the
13 prohibition against strikes and organized work stoppages, and
14 providing penalties for strikes and organized work stoppages."

15 (e) An election ordered under Subsection (b) must be held
16 and the returns prepared and canvassed in conformity with the
17 Election Code.

18 (f) If an election ordered under Subsection (b) is held, the
19 municipality may continue to operate under this subchapter only if
20 a majority of the votes cast at the election favor the proposition.

21 (g) If an election ordered under Subsection (b) is held, an
22 association may not submit a petition for recognition to the
23 governing body of the municipality under Section 142.053 before the
24 second anniversary of the date of the election.

25 Sec. 142.066. ELECTION TO REPEAL AGREEMENT. (a) Not later
26 than the 60th day after the date a meet and confer agreement is
27 ratified by the governing body of the municipality and the

1 recognized police officers association, a petition calling for the
2 repeal of the agreement signed by a number of registered voters
3 residing in the municipality equal to at least 10 percent of the
4 votes cast at the most recent general election held in the
5 municipality may be presented to the person charged with ordering
6 an election under Section 3.004, Election Code.

7 (b) If a petition is presented under Subsection (a), the
8 governing body of the municipality shall:

9 (1) repeal the meet and confer agreement; or

10 (2) certify that it is not repealing the agreement and
11 call an election to determine whether to repeal the agreement.

12 (c) An election called under Subsection (b)(2) may be held
13 as part of the next regularly scheduled general election for the
14 municipality. The ballot shall be printed to provide for voting for
15 or against the proposition: "Repeal the meet and confer agreement
16 ratified on _____ (date agreement was ratified) by the _____
17 (name of the governing body of the municipality) and the police
18 officers employed by the City of _____ (name of municipality)
19 concerning wages, salaries, rates of pay, hours of work, and other
20 terms of employment."

21 (d) If a majority of the votes cast at the election favor the
22 repeal of the agreement, the agreement is void.

23 Sec. 142.067. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.
24 A written meet and confer agreement ratified under this subchapter
25 preempts, during the term of the agreement and to the extent of any
26 conflict, all contrary state statutes, local ordinances, executive
27 orders, civil service provisions, or rules adopted by the head of

1 the law enforcement agency or municipality or by a division or agent
2 of the municipality, such as a personnel board or a civil service
3 commission.

4 Sec. 142.068. EFFECT ON EXISTING BENEFITS. This subchapter
5 may not be construed as repealing any existing benefit provided by
6 statute or ordinance concerning police officers' compensation,
7 pensions, retirement plans, hours of work, conditions of
8 employment, or other emoluments, except as expressly provided in a
9 ratified meet and confer agreement. This subchapter is in addition
10 to the benefits provided by existing statutes and ordinances.

11 SECTION 3. This Act takes effect September 1, 2005.