

1-1 By: Talton, et al. (Senate Sponsor - Deuell) H.B. No. 304
1-2 (In the Senate - Received from the House March 7, 2005;
1-3 March 30, 2005, read first time and referred to Committee on
1-4 Intergovernmental Relations; April 26, 2005, reported adversely,
1-5 with favorable Committee Substitute by the following vote: Yeas 5,
1-6 Nays 0; April 26, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 304 By: Deuell

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to conditions of employment for police officers employed
1-11 by certain municipalities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 142, Local Government Code, is amended
1-14 by designating Sections 142.001-142.013 as Subchapter A and adding
1-15 a heading for Subchapter A to read as follows:

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 SECTION 2. Chapter 142, Local Government Code, is amended
1-18 by adding Subchapter B to read as follows:

1-19 SUBCHAPTER B. LOCAL CONTROL OF POLICE OFFICER EMPLOYMENT MATTERS
1-20 IN CERTAIN MUNICIPALITIES

1-21 Sec. 142.051. APPLICABILITY. (a) Except as provided by
1-22 Subsection (b), this subchapter applies only to a municipality:

1-23 (1) with a population of 50,000 or more; or

1-24 (2) that has adopted Chapter 143.

1-25 (b) This subchapter does not apply to a municipality that:

1-26 (1) has adopted Chapter 174;

1-27 (2) is covered by Subchapter H, I, or J, Chapter 143;

1-28 or

1-29 (3) has a population of one million or more and has not
1-30 adopted Chapter 143.

1-31 Sec. 142.052. DEFINITIONS. In this subchapter:

1-32 (1) "Police officer" means a person who is a peace
1-33 officer under Article 2.12, Code of Criminal Procedure, or other
1-34 law, and who is employed by a municipality.

1-35 (2) "Police officers association" means an employee
1-36 organization in which police officers employed by a municipality
1-37 participate that exists for the purpose, in whole or in part, of
1-38 dealing with the municipality or public employer concerning
1-39 grievances, labor disputes, wages, rates of pay, hours of work, or
1-40 conditions of work affecting police officers.

1-41 (3) "Public employer" means a municipality or a law
1-42 enforcement agency of the municipality that is required to
1-43 establish the wages, salaries, rates of pay, hours of work, working
1-44 conditions, and other terms and conditions of employment of police
1-45 officers employed by the municipality.

1-46 Sec. 142.053. PETITION FOR RECOGNITION: ELECTION OR ACTION
1-47 BY GOVERNING BODY. (a) Not later than the 30th day after the date
1-48 the governing body of a municipality receives from a police
1-49 officers association a petition signed by the majority of all
1-50 police officers, excluding the head of the law enforcement agency
1-51 for the municipality and excluding the employees exempt under
1-52 Section 142.058(b), that requests recognition of the association as
1-53 the sole and exclusive bargaining agent for all the police officers
1-54 employed by the municipality, excluding the head of the law
1-55 enforcement agency for the municipality and excluding the exempt
1-56 employees, the governing body shall:

1-57 (1) grant recognition of the association as requested
1-58 in the petition and determine by majority vote that a public
1-59 employer may meet and confer under this subchapter without
1-60 conducting an election by the voters in the municipality under
1-61 Section 142.055;

1-62 (2) defer granting recognition of the association and
1-63 order an election by the voters in the municipality under Section

2-1 142.055 regarding whether a public employer may meet and confer
 2-2 under this subchapter; or

2-3 (3) order a certification election under Section
 2-4 142.054 to determine whether the association represents a majority
 2-5 of the affected police officers.

2-6 (b) If the governing body of a municipality orders a
 2-7 certification election under Subsection (a)(3) and the association
 2-8 named in the petition is certified to represent a majority of the
 2-9 affected police officers of the municipality, the governing body
 2-10 shall, not later than the 30th day after the date that results of
 2-11 that election are certified:

2-12 (1) grant recognition of the association as requested
 2-13 in the petition for recognition and determine by majority vote that
 2-14 a public employer may meet and confer under this subchapter without
 2-15 conducting an election by the voters in the municipality under
 2-16 Section 142.055; or

2-17 (2) defer granting recognition of the association and
 2-18 order an election by the voters in the municipality under Section
 2-19 142.055 regarding whether a public employer may meet and confer
 2-20 under this subchapter.

2-21 Sec. 142.054. CERTIFICATION ELECTION. (a) Except as
 2-22 provided by Subsection (b), a certification election ordered under
 2-23 Section 142.053(a)(3) to determine whether a police officers
 2-24 association represents a majority of the covered police officers
 2-25 shall be conducted according to procedures agreeable to the
 2-26 parties.

2-27 (b) If the parties are unable to agree on procedures for the
 2-28 certification election, either party may request the American
 2-29 Arbitration Association to conduct the election and to certify the
 2-30 results of the election.

2-31 (c) Certification of the results of an election under this
 2-32 section resolves the question concerning representation.

2-33 (d) The association is liable for the expenses of the
 2-34 certification election, except that if two or more associations
 2-35 seeking recognition as the sole and exclusive bargaining agent
 2-36 submit a petition signed by at least 30 percent of the police
 2-37 officers eligible to sign the petition for recognition, all the
 2-38 associations named in any petition shall share equally the costs of
 2-39 the election.

2-40 Sec. 142.055. ELECTION TO AUTHORIZE OPERATING UNDER THIS
 2-41 SUBCHAPTER. (a) The governing body of a municipality that
 2-42 receives a petition for recognition under Section 142.053 may order
 2-43 an election to determine whether a public employer may meet and
 2-44 confer under this subchapter.

2-45 (b) An election ordered under this section must be held as
 2-46 part of the next regularly scheduled general election for municipal
 2-47 officials that is held after the date the governing body of the
 2-48 municipality orders the election and that allows sufficient time to
 2-49 prepare the ballot in compliance with other requirements of law.

2-50 (c) The ballot for an election ordered under this section
 2-51 shall be printed to permit voting for or against the proposition:
 2-52 "Authorizing _____ (name of the municipality) to operate under
 2-53 the state law allowing a municipality to meet and confer and make
 2-54 agreements with the association representing municipal police
 2-55 officers as provided by state law, preserving the prohibition
 2-56 against strikes and organized work stoppages, and providing
 2-57 penalties for strikes and organized work stoppages."

2-58 (d) An election called under this section must be held and
 2-59 the returns prepared and canvassed in conformity with the Election
 2-60 Code.

2-61 (e) If an election authorized under this section is held,
 2-62 the municipality may operate under the other provisions of this
 2-63 subchapter only if a majority of the votes cast at the election
 2-64 favor the proposition.

2-65 (f) If an election authorized under this section is held, an
 2-66 association may not submit a petition for recognition to the
 2-67 governing body of the municipality under Section 142.053 before the
 2-68 second anniversary of the date of the election.

2-69 Sec. 142.056. CHANGE OR MODIFICATION OF RECOGNITION.

3-1 (a) The police officers may modify or change the recognition of
3-2 the association granted under this subchapter by filing with the
3-3 governing body of the municipality a petition signed by a majority
3-4 of all covered police officers.

3-5 (b) The governing body of the municipality may:
3-6 (1) recognize the change or modification as provided
3-7 by the petition; or

3-8 (2) order a certification election in accordance with
3-9 Section 142.054 regarding whether to do so.

3-10 Sec. 142.057. STRIKES PROHIBITED. (a) A police officer
3-11 employed by a municipality may not engage in a strike or organized
3-12 work stoppage against this state or the municipality.

3-13 (b) A police officer who participates in a strike forfeits
3-14 any civil service rights, reemployment rights, and other rights,
3-15 benefits, or privileges the police officer may have as a result of
3-16 the officer's employment or prior employment with the municipality.

3-17 (c) This section does not affect the right of a person to
3-18 cease work if the person is not acting in concert with others in an
3-19 organized work stoppage.

3-20 Sec. 142.058. RECOGNITION OF POLICE OFFICERS ASSOCIATION.

3-21 (a) A public employer in a municipality that chooses to meet and
3-22 confer under this subchapter shall recognize an association that is
3-23 recognized under Section 142.053 or 142.054 as the sole and
3-24 exclusive bargaining agent for the covered police officers
3-25 described in the petition for recognition, excluding the head of
3-26 the law enforcement agency and excluding the employees exempt under
3-27 Subsection (b), in accordance with this subchapter and the
3-28 petition.

3-29 (b) For the purposes of Subsection (a), exempt employees are
3-30 the employees appointed by the head of the law enforcement agency of
3-31 the municipality under Section 143.014 or that are exempt by the
3-32 mutual agreement of the recognized police officers association and
3-33 the public employer.

3-34 (c) The public employer shall recognize the police officers
3-35 association until recognition of the association is withdrawn, in
3-36 accordance with Section 142.056, by a majority of the police
3-37 officers eligible to sign a petition for recognition.

3-38 Sec. 142.059. GENERAL PROVISIONS RELATING TO AGREEMENTS.

3-39 (a) A municipality acting under this subchapter may not be denied
3-40 local control over the wages, salaries, rates of pay, hours of work,
3-41 or other terms and conditions of employment to the extent the public
3-42 employer and the police officers association recognized as the sole
3-43 and exclusive bargaining agent under this subchapter agree as
3-44 provided by this subchapter, if the agreement is ratified and not
3-45 withdrawn in accordance with this subchapter. Applicable statutes
3-46 and applicable local orders, ordinances, and civil service rules
3-47 apply to an issue not governed by the meet and confer agreement.

3-48 (b) A meet and confer agreement under this subchapter must
3-49 be written.

3-50 (c) This subchapter does not require a public employer or a
3-51 recognized police officers association to meet and confer on any
3-52 issue or reach an agreement.

3-53 (d) A public employer and the recognized police officers
3-54 association may meet and confer only if the association does not
3-55 advocate an illegal strike by public employees.

3-56 (e) While a meet and confer agreement under this subchapter
3-57 between the public employer and the recognized police officers
3-58 association is in effect, the public employer may not accept a
3-59 petition, with regard to the police officers of the municipality
3-60 requesting an election to adopt:

3-61 (1) municipal civil service under Chapter 143; or

3-62 (2) collective bargaining under Chapter 174.

3-63 Sec. 142.060. SELECTION OF BARGAINING AGENT; BARGAINING

3-64 UNIT. (a) The public employer's chief executive officer or the
3-65 chief executive officer's designee shall select one or more persons
3-66 to represent the public employer as its sole and exclusive
3-67 bargaining agent to meet and confer on issues related to the wages,
3-68 hours of employment, and other terms and conditions of employment
3-69 of police officers by the municipality.

4-1 (b) A police officers association may designate one or more
4-2 persons to negotiate or bargain on the association's behalf.

4-3 (c) A municipality's bargaining unit is composed of all the
4-4 police officers of the municipality who are not the head of the law
4-5 enforcement agency or exempt under Section 142.058(b).

4-6 Sec. 142.061. PROTECTED RIGHTS OF POLICE OFFICER. (a) For
4-7 any disciplinary appeal, a member of the municipality's bargaining
4-8 unit may be represented by the police officers association or by any
4-9 person the member selects.

4-10 (b) A meet and confer agreement ratified under this
4-11 subchapter may not interfere with the right of a member of a
4-12 bargaining unit to pursue allegations of discrimination based on
4-13 race, creed, color, national origin, religion, age, sex, or
4-14 disability with the Texas Workforce Commission civil rights
4-15 division or the federal Equal Employment Opportunity Commission or
4-16 to pursue affirmative action litigation.

4-17 Sec. 142.062. OPEN RECORDS. (a) A proposed meet and
4-18 confer agreement and a document prepared and used by the
4-19 municipality, including a public employer, in connection with the
4-20 proposed agreement are available to the public under Chapter 552,
4-21 Government Code, only after the agreement is ready to be ratified by
4-22 the governing body of the municipality.

4-23 (b) This section does not affect the application of
4-24 Subchapter C, Chapter 552, Government Code, to a document prepared
4-25 and used in connection with the agreement.

4-26 Sec. 142.063. OPEN DELIBERATIONS. (a) Deliberations
4-27 relating to a meet and confer agreement or proposed agreement under
4-28 this subchapter between representatives of the public employer and
4-29 representatives of the police officers association elected by a
4-30 majority vote of the officers to be the sole and exclusive
4-31 bargaining agent of the covered officers must be open to the public
4-32 and comply with state law.

4-33 (b) Subsection (a) may not be construed to prohibit the
4-34 representatives of the public employer or the representatives of
4-35 the police officers association from conducting private caucuses
4-36 that are not open to the public during meet and confer negotiations.

4-37 Sec. 142.064. RATIFICATION AND ENFORCEABILITY OF
4-38 AGREEMENT. (a) An agreement under this subchapter is enforceable
4-39 and binding on the public employer, the recognized police officers
4-40 association, and the police officers covered by the meet and confer
4-41 agreement only if:

4-42 (1) the governing body of the municipality ratified
4-43 the agreement by a majority vote; and

4-44 (2) the recognized police officers association
4-45 ratified the agreement by conducting a secret ballot election at
4-46 which the majority of the police officers who would be covered by
4-47 the agreement favored ratifying the agreement.

4-48 (b) A meet and confer agreement ratified as described by
4-49 Subsection (a) may establish a procedure by which the parties agree
4-50 to resolve disputes related to a right, duty, or obligation
4-51 provided by the agreement, including binding arbitration on a
4-52 question involving interpretation of the agreement.

4-53 (c) A state district court of a judicial district in which
4-54 the municipality is located has jurisdiction to hear and resolve a
4-55 dispute under the ratified meet and confer agreement on the
4-56 application of a party to the agreement aggrieved by an action or
4-57 omission of the other party when the action or omission is related
4-58 to a right, duty, or obligation provided by the agreement. The
4-59 court may issue proper restraining orders, temporary and permanent
4-60 injunctions, or any other writ, order, or process, including
4-61 contempt orders, that are appropriate to enforcing the agreement.

4-62 Sec. 142.065. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
4-63 OPERATE UNDER THIS SUBCHAPTER. (a) The governing body of a
4-64 municipality that granted recognition of a police officers
4-65 association under Section 142.053 without conducting an election
4-66 under Section 142.055 may withdraw recognition of the association
4-67 by providing to the association not less than 90 days' written
4-68 notice that:

4-69 (1) the governing body is withdrawing recognition of

5-1 the association; and

5-2 (2) any agreement between the governing body and the
5-3 association will not be renewed.

5-4 (b) The governing body of a municipality that granted
5-5 recognition of a police officers association after conducting an
5-6 election under Section 142.055 may order an election to determine
5-7 whether a public employer may continue to meet and confer under this
5-8 subchapter. The governing body may not order an election under this
5-9 subsection until the second anniversary of the date of the election
5-10 under Section 142.055.

5-11 (c) An election ordered under Subsection (b) must be held
5-12 as part of the next regularly scheduled general election for
5-13 municipal officers that occurs after the date the governing body of
5-14 the municipality orders the election and that allows sufficient
5-15 time to prepare the ballot in compliance with other requirements of
5-16 law.

5-17 (d) The ballot for an election ordered under Subsection (b)
5-18 shall be printed to allow voting for or against the proposition:
5-19 "Authorizing _____ (name of the municipality) to continue to
5-20 operate under the state law allowing a municipality to meet and
5-21 confer and make agreements with the association representing
5-22 municipal police officers as provided by state law, preserving the
5-23 prohibition against strikes and organized work stoppages, and
5-24 providing penalties for strikes and organized work stoppages."

5-25 (e) An election ordered under Subsection (b) must be held
5-26 and the returns prepared and canvassed in conformity with the
5-27 Election Code.

5-28 (f) If an election ordered under Subsection (b) is held, the
5-29 municipality may continue to operate under this subchapter only if
5-30 a majority of the votes cast at the election favor the proposition.

5-31 (g) If an election ordered under Subsection (b) is held, an
5-32 association may not submit a petition for recognition to the
5-33 governing body of the municipality under Section 142.053 before the
5-34 second anniversary of the date of the election.

5-35 Sec. 142.066. ELECTION TO REPEAL AGREEMENT. (a) Not later
5-36 than the 60th day after the date a meet and confer agreement is
5-37 ratified by the governing body of the municipality and the
5-38 recognized police officers association, a petition calling for the
5-39 repeal of the agreement signed by a number of registered voters
5-40 residing in the municipality equal to at least 10 percent of the
5-41 votes cast at the most recent general election held in the
5-42 municipality may be presented to the person charged with ordering
5-43 an election under Section 3.004, Election Code.

5-44 (b) If a petition is presented under Subsection (a), the
5-45 governing body of the municipality shall:

5-46 (1) repeal the meet and confer agreement; or

5-47 (2) certify that it is not repealing the agreement and
5-48 call an election to determine whether to repeal the agreement.

5-49 (c) An election called under Subsection (b)(2) may be held
5-50 as part of the next regularly scheduled general election for the
5-51 municipality. The ballot shall be printed to provide for voting for
5-52 or against the proposition: "Repeal the meet and confer agreement
5-53 ratified on _____ (date agreement was ratified) by the _____
5-54 (name of the governing body of the municipality) and the police
5-55 officers employed by the City of _____ (name of municipality)
5-56 concerning wages, salaries, rates of pay, hours of work, and other
5-57 terms of employment."

5-58 (d) If a majority of the votes cast at the election favor the
5-59 repeal of the agreement, the agreement is void.

5-60 Sec. 142.067. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.
5-61 A written meet and confer agreement ratified under this subchapter
5-62 preempts, during the term of the agreement and to the extent of any
5-63 conflict, all contrary state statutes, local ordinances, executive
5-64 orders, civil service provisions, or rules adopted by the head of
5-65 the law enforcement agency or municipality or by a division or agent
5-66 of the municipality, such as a personnel board or a civil service
5-67 commission.

5-68 Sec. 142.068. EFFECT ON EXISTING BENEFITS AND RIGHTS.
5-69 (a) This subchapter may not be construed as repealing any existing

6-1 benefit provided by statute or ordinance concerning police
6-2 officers' compensation, pensions, retirement plans, hours of work,
6-3 conditions of employment, or other emoluments, except as expressly
6-4 provided in a ratified meet and confer agreement. This subchapter
6-5 is in addition to the benefits provided by existing statutes and
6-6 ordinances.

6-7 (b) This subchapter may not be construed to interfere with a
6-8 police officer's constitutionally protected rights of freedom of
6-9 speech, freedom of association, and freedom to endorse or dissent
6-10 from any agreement.

6-11 SECTION 3. This Act takes effect September 1, 2005.

6-12 * * * * *