

1-1 By: Bailey, Edwards (Senate Sponsor - Whitmire) H.B. No. 2866
1-2 (In the Senate - Received from the House May 13, 2005;
1-3 May 16, 2005, read first time and referred to Committee on
1-4 Intergovernmental Relations; May 20, 2005, reported favorably by
1-5 the following vote: Yeas 5, Nays 0; May 20, 2005, sent to
1-6 printer.)

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the right of certain municipalities to maintain local
1-10 control over wages, hours, and other terms and conditions of
1-11 employment.

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

1-13 SECTION 1. The heading of Chapter 143, Local Government
1-14 Code, is amended to read as follows:

1-15 CHAPTER 143. MUNICIPAL CIVIL SERVICE FOR FIREFIGHTERS AND POLICE
1-16 OFFICERS

1-17 SECTION 2. Subtitle A, Title 5, Local Government Code, is
1-18 amended by adding Chapter 146 to read as follows:

1-19 CHAPTER 146. LOCAL CONTROL OF MUNICIPAL EMPLOYMENT MATTERS IN
1-20 CERTAIN MUNICIPALITIES

1-21 Sec. 146.001. APPLICABILITY. (a) This chapter applies
1-22 only to a municipality with a population of 1.5 million or more.

1-23 (b) This chapter does not apply to:

1-24 (1) firefighters or police officers who are covered by
1-25 Subchapter H, I, or J of Chapter 143 or by Chapter 174; or

1-26 (2) an employee association in which those employees
1-27 participate.

1-28 Sec. 146.002. DEFINITIONS. In this chapter:

1-29 (1) "Covered employee" means an employee of a
1-30 municipality, other than a department head or a firefighter or
1-31 police officer who is covered by Subchapter H, I, or J of Chapter
1-32 143 or by Chapter 174.

1-33 (2) "Employee association" means an organization in
1-34 which municipal employees participate and that exists for the
1-35 purpose, wholly or partly, of dealing with one or more employers,
1-36 whether public or private, concerning grievances, labor disputes,
1-37 wages, rates of pay, hours of employment, or conditions of work
1-38 affecting public employees and whose members pay dues by means of an
1-39 automatic payroll deduction.

1-40 (3) "Public employer" means any municipality or
1-41 agency, board, commission, or political subdivision controlled by a
1-42 municipality that is required to establish the wages, salaries,
1-43 rates of pay, hours, working conditions, and other terms and
1-44 conditions of employment of public employees. The term may
1-45 include, under appropriate circumstances, a mayor, manager,
1-46 administrator of a municipality, municipal governing body,
1-47 director of personnel, personnel board, or one or more other
1-48 officials regardless of the name by which they are designated.

1-49 Sec. 146.003. GENERAL PROVISIONS RELATING TO AGREEMENTS AND
1-50 RECOGNITION. (a) A municipality may not be denied local control
1-51 over the wages, salaries, rates of pay, hours of work, other terms
1-52 and conditions of employment, or other state-mandated personnel
1-53 issues. A public employer may enter into a mutual agreement
1-54 governing these issues with an employee association recognized
1-55 under this chapter as the sole and exclusive bargaining agent for
1-56 all covered employees that does not advocate the illegal right to
1-57 strike by municipal employees. The applicable statutes, local
1-58 ordinances, and civil service rules govern a term or condition of
1-59 employment on which the public employer and the association do not
1-60 agree.

1-61 (b) An agreement under this chapter must be written.

1-62 (c) This chapter does not require the public employer and
1-63 the recognized employee association to meet and confer or reach an
1-64 agreement on any issue.

2-1 (d) This chapter does not authorize an agreement regarding
 2-2 pension or pension-related matters governed by Chapter 358, Acts of
 2-3 the 48th Legislature, Regular Session, 1943 (Article 6243g,
 2-4 Vernon's Texas Civil Statutes), or a successor statute.

2-5 Sec. 146.004. PETITION FOR RECOGNITION: ELECTION OR ACTION
 2-6 BY GOVERNING BODY. (a) Not later than the 30th day after the date
 2-7 the governing body of a municipality receives from an employee
 2-8 association a petition signed by the majority of all covered
 2-9 employees that requests recognition of the association as the sole
 2-10 and exclusive bargaining agent for all the covered employees, the
 2-11 governing body shall:

2-12 (1) grant recognition of the association as requested
 2-13 in the petition and find that a public employer may meet and confer
 2-14 under this chapter without conducting an election by the voters in
 2-15 the municipality under Section 146.006;

2-16 (2) defer granting recognition of the association and
 2-17 order an election by the voters in the municipality under Section
 2-18 146.006 regarding whether a public employer may meet and confer
 2-19 under this chapter; or

2-20 (3) order a certification election under Section
 2-21 146.005 to determine whether the association represents a majority
 2-22 of the covered employees.

2-23 (b) If the governing body of a municipality orders a
 2-24 certification election under Subsection (a)(3) and the association
 2-25 named in the petition is certified to represent a majority of the
 2-26 covered employees, the governing body shall, not later than the
 2-27 30th day after the date that results of that election are certified:

2-28 (1) grant recognition of the association as requested
 2-29 in the petition for recognition and find that a public employer may
 2-30 meet and confer under this chapter without conducting an election
 2-31 by the voters in the municipality under Section 146.006; or

2-32 (2) defer granting recognition of the association and
 2-33 order an election by the voters in the municipality under Section
 2-34 146.006 regarding whether a public employer may meet and confer
 2-35 under this chapter.

2-36 Sec. 146.005. CERTIFICATION ELECTION. (a) Except as
 2-37 provided by Subsection (b), a certification election ordered under
 2-38 Section 146.004(a)(3) to determine whether an employee association
 2-39 represents a majority of the covered employees shall be conducted
 2-40 according to procedures agreeable to the parties.

2-41 (b) If the parties are unable to agree on procedures for the
 2-42 certification election, either party may request the American
 2-43 Arbitration Association to conduct the election and to certify the
 2-44 results of the election.

2-45 (c) Certification of the results of an election under this
 2-46 section resolves the question concerning representation.

2-47 (d) The association is liable for the expenses of the
 2-48 certification election, except that if two or more associations
 2-49 seeking recognition as the sole and exclusive bargaining agent
 2-50 submit a petition signed by at least 30 percent of the employees
 2-51 eligible to sign the petition for recognition, all the associations
 2-52 named in any petition shall share equally the costs of the election.

2-53 Sec. 146.006. ELECTION TO AUTHORIZE OPERATING UNDER THIS
 2-54 CHAPTER. (a) The governing body of a municipality that receives a
 2-55 petition for recognition under Section 146.004 may order an
 2-56 election to determine whether a public employer may meet and confer
 2-57 under this chapter.

2-58 (b) An election ordered under this section must be held as
 2-59 part of the next regularly scheduled general election for municipal
 2-60 officials that is held after the date the governing body of the
 2-61 municipality orders the election and that allows sufficient time to
 2-62 prepare the ballot in compliance with other requirements of law.

2-63 (c) The ballot for an election ordered under this section
 2-64 shall be printed to permit voting for or against the proposition:
 2-65 "Authorizing _____ (name of the municipality) to operate under
 2-66 the state law allowing a municipality to meet and confer and make
 2-67 agreements with the association representing municipal employees
 2-68 as provided by state law, preserving the prohibition against
 2-69 strikes and organized work stoppages, and providing penalties for

3-1 strikes and organized work stoppages."

3-2 (d) An election called under this section must be held and
3-3 the returns prepared and canvassed in conformity with the Election
3-4 Code.

3-5 (e) If an election authorized under this section is held,
3-6 the municipality may operate under the other provisions of this
3-7 chapter only if a majority of the votes cast at the election favor
3-8 the proposition.

3-9 (f) If an election authorized under this section is held, an
3-10 association may not submit a petition for recognition to the
3-11 governing body of the municipality under Section 146.004 before the
3-12 second anniversary of the date of the election.

3-13 Sec. 146.007. CHANGE OR MODIFICATION OF RECOGNITION. (a)
3-14 The municipal employees may modify or change the recognition of the
3-15 employee association granted under this chapter by filing with the
3-16 governing body of the municipality a petition signed by a majority
3-17 of all covered employees.

3-18 (b) The governing body of the municipality may:

3-19 (1) recognize the change or modification as provided
3-20 by the petition; or

3-21 (2) order a certification election in accordance with
3-22 Section 146.005 regarding whether to do so.

3-23 Sec. 146.008. STRIKES PROHIBITED. (a) A municipal
3-24 employee may not engage in a strike or organized work stoppage
3-25 against this state or the municipality.

3-26 (b) A municipal employee who participates in a strike
3-27 forfeits any civil service rights, reemployment rights, and other
3-28 rights, benefits, or privileges the employee may have as a result of
3-29 the employee's employment or prior employment with the
3-30 municipality.

3-31 (c) This section does not affect the right of a person to
3-32 cease work if the person is not acting in concert with others in an
3-33 organized work stoppage.

3-34 Sec. 146.009. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) A
3-35 public employer in a municipality that chooses to meet and confer
3-36 under this chapter shall recognize an association that is
3-37 recognized under Section 146.004 or 146.005 as the sole and
3-38 exclusive bargaining agent for the covered employees.

3-39 (b) The public employer shall recognize the employee
3-40 association until recognition of the association is withdrawn, in
3-41 accordance with Section 146.007, by a majority of the municipal
3-42 employees eligible to sign a petition for recognition.

3-43 Sec. 146.010. SELECTION OF BARGAINING AGENT; BARGAINING
3-44 UNIT. (a) The public employer's chief executive officer or the
3-45 chief executive officer's designee shall select one or more persons
3-46 to represent the public employer as its sole and exclusive
3-47 bargaining agent to meet and confer on issues related to the wages,
3-48 hours of employment, and other terms and conditions of employment
3-49 of municipal employees.

3-50 (b) An employee association may designate one or more
3-51 persons to negotiate or bargain on the association's behalf.

3-52 (c) A municipality's bargaining unit is composed of all the
3-53 covered employees.

3-54 Sec. 146.011. PROTECTED RIGHTS OF EMPLOYEES. A meet and
3-55 confer agreement ratified under this chapter may not interfere with
3-56 the right of a member of a bargaining unit to pursue allegations of
3-57 discrimination based on race, creed, color, national origin,
3-58 religion, age, sex, or disability with the Texas Workforce
3-59 Commission civil rights division or the federal Equal Employment
3-60 Opportunity Commission or to pursue affirmative action litigation.

3-61 Sec. 146.012. OPEN RECORDS. (a) A proposed meet and confer
3-62 agreement and a document prepared and used by the municipality,
3-63 including a public employer, in connection with the proposed
3-64 agreement are available to the public under Chapter 552, Government
3-65 Code, only after the agreement is ready to be ratified by the
3-66 governing body of the municipality.

3-67 (b) This section does not affect the application of
3-68 Subchapter C, Chapter 552, Government Code, to a document prepared
3-69 and used in connection with the agreement.

4-1 Sec. 146.013. OPEN DELIBERATIONS. (a) Deliberations
 4-2 relating to a meet and confer agreement or proposed agreement under
 4-3 this chapter between representatives of the public employer and
 4-4 representatives of the employee association recognized under this
 4-5 chapter as the sole and exclusive bargaining agent for the covered
 4-6 employees must be open to the public and comply with state law.

4-7 (b) Subsection (a) may not be construed to prohibit the
 4-8 representatives of the public employer or the representatives of
 4-9 the recognized employee association from conducting private
 4-10 caucuses that are not open to the public during meet and confer
 4-11 negotiations.

4-12 Sec. 146.014. RATIFICATION AND ENFORCEABILITY OF
 4-13 AGREEMENT. (a) An agreement under this chapter is enforceable and
 4-14 binding on the public employer, the recognized employee
 4-15 association, and the employees covered by the meet and confer
 4-16 agreement only if:

4-17 (1) the governing body of the municipality ratified
 4-18 the agreement by a majority vote; and

4-19 (2) the recognized employee association ratified the
 4-20 agreement by conducting a secret ballot election at which the
 4-21 majority of the covered employees who are members of the
 4-22 association favored ratifying the agreement.

4-23 (b) A meet and confer agreement ratified as described by
 4-24 Subsection (a) may establish a procedure by which the parties agree
 4-25 to resolve disputes related to a right, duty, or obligation
 4-26 provided by the agreement, including binding arbitration on a
 4-27 question involving interpretation of the agreement.

4-28 (c) A state district court of a judicial district in which
 4-29 the municipality is located has jurisdiction to hear and resolve a
 4-30 dispute under the ratified meet and confer agreement on the
 4-31 application of a party to the agreement aggrieved by an action or
 4-32 omission of the other party when the action or omission is related
 4-33 to a right, duty, or obligation provided by the agreement. The
 4-34 court may issue proper restraining orders, temporary and permanent
 4-35 injunctions, or any other writ, order, or process, including
 4-36 contempt orders, that are appropriate to enforcing the agreement.

4-37 Sec. 146.015. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
 4-38 OPERATE UNDER THIS CHAPTER. (a) The governing body of a
 4-39 municipality that granted recognition of an employee association
 4-40 under Section 146.004 without conducting an election under Section
 4-41 146.006 may withdraw recognition of the association by providing to
 4-42 the association not less than 90 days' written notice that:

4-43 (1) the governing body is withdrawing recognition of
 4-44 the association; and

4-45 (2) any agreement between the governing body and the
 4-46 association will not be renewed.

4-47 (b) The governing body of a municipality that granted
 4-48 recognition of an employee association after conducting an election
 4-49 under Section 146.006 may order an election to determine whether a
 4-50 public employer may continue to meet and confer under this chapter.
 4-51 The governing body may not order an election under this subsection
 4-52 until the second anniversary of the date of the election under
 4-53 Section 146.006.

4-54 (c) An election ordered under Subsection (b) must be held
 4-55 as part of the next regularly scheduled general election for
 4-56 municipal officers that occurs after the date the governing body of
 4-57 the municipality orders the election and that allows sufficient
 4-58 time to prepare the ballot in compliance with other requirements of
 4-59 law.

4-60 (d) The ballot for an election ordered under Subsection (b)
 4-61 shall be printed to allow voting for or against the proposition:
 4-62 "Authorizing _____ (name of the municipality) to continue to
 4-63 operate under the state law allowing a municipality to meet and
 4-64 confer and make agreements with the association representing
 4-65 municipal employees as provided by state law, preserving the
 4-66 prohibition against strikes and organized work stoppages, and
 4-67 providing penalties for strikes and organized work stoppages."

4-68 (e) An election ordered under Subsection (b) must be held
 4-69 and the returns prepared and canvassed in conformity with the

5-1 Election Code.

5-2 (f) If an election ordered under Subsection (b) is held, the
 5-3 municipality may continue to operate under this chapter only if a
 5-4 majority of the votes cast at the election favor the proposition.

5-5 (g) If an election ordered under Subsection (b) is held, an
 5-6 association may not submit a petition for recognition to the
 5-7 governing body of the municipality under Section 146.004 before the
 5-8 second anniversary of the date of the election.

5-9 Sec. 146.016. ELECTION TO REPEAL AGREEMENT. (a) Not later
 5-10 than the 45th day after the date a meet and confer agreement is
 5-11 ratified by the governing body of the municipality and the
 5-12 recognized employee association, a petition calling for the repeal
 5-13 of the agreement signed by at least 10 percent of the qualified
 5-14 voters residing in the municipality may be presented to the person
 5-15 charged with ordering an election under Section 3.004, Election
 5-16 Code.

5-17 (b) If a petition is presented under Subsection (a), the
 5-18 governing body of the municipality shall:

5-19 (1) repeal the meet and confer agreement; or

5-20 (2) certify that it is not repealing the agreement and
 5-21 call an election to determine whether to repeal the agreement.

5-22 (c) An election called under Subsection (b)(2) may be held
 5-23 as part of the next regularly scheduled general election for the
 5-24 municipality or a special election called by the governing body for
 5-25 that purpose. The ballot shall be printed to provide for voting for
 5-26 or against the proposition: "Repeal the meet and confer agreement
 5-27 ratified on _____ (date agreement was ratified) by the _____
 5-28 (name of the governing body of the municipality) and the _____
 5-29 (recognized municipal employee association) concerning wages,
 5-30 salaries, rates of pay, hours of work, and other terms of
 5-31 employment."

5-32 (d) If a majority of the votes cast at the election favor the
 5-33 repeal of the agreement, the agreement is void.

5-34 Sec. 146.017. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.
 5-35 A written meet and confer agreement ratified under this chapter
 5-36 preempts, during the term of the agreement and to the extent of any
 5-37 conflict, all contrary state statutes, local ordinances, executive
 5-38 orders, civil service provisions, or rules adopted by this state or
 5-39 a political subdivision or agent of this state, including a
 5-40 personnel board, civil service commission, or home-rule
 5-41 municipality, other than a statute, ordinance, executive order,
 5-42 civil service provision, or rule regarding pensions or
 5-43 pension-related matters.

5-44 SECTION 3. This Act takes effect September 1, 2005.

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