

By: Luna

H.B. No. 2892

A BILL TO BE ENTITLED

AN ACT

relating to conditions of employment for firefighters 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 C to read as follows:

SUBCHAPTER C. LOCAL CONTROL OF FIREFIGHTER EMPLOYMENT

MATTERS IN CERTAIN MUNICIPALITIES

Sec. 142.101. 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. 142.102. DEFINITIONS. In this subchapter:

(1) "Firefighter" means a person who is defined as

1 fire protection personnel under Section 419.021, Government Code,  
2 and who is employed by a municipality.

3 (2) "Firefighters association" means an employee  
4 organization in which firefighters 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 firefighters.

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

14 Sec. 142.103. 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 firefighters  
17 association a petition signed by the majority of all firefighters,  
18 excluding the head of the fire department for the municipality and  
19 excluding the employees exempt under Section 142.108(b), that  
20 requests recognition of the association as the sole and exclusive  
21 bargaining agent for all the firefighters employed by the  
22 municipality, excluding the head of the fire department for the  
23 municipality and excluding the exempt employees, the governing body  
24 shall:

25 (1) grant recognition of the association as requested  
26 in the petition and determine by majority vote regarding whether a  
27 public employer may meet and confer under this subchapter without

1 conducting an election by the voters in the municipality under  
2 Section 142.105;

3 (2) defer granting recognition of the association and  
4 order an election by the voters in the municipality under Section  
5 142.105 regarding whether a public employer may meet and confer  
6 under this subchapter; or

7 (3) order a certification election under Section  
8 142.104 to determine whether the association represents a majority  
9 of the affected firefighters.

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

16 (1) grant recognition of the association as requested  
17 in the petition for recognition and find that a public employer may  
18 meet and confer under this subchapter without conducting an  
19 election by the voters in the municipality under Section 142.105;  
20 or

21 (2) defer granting recognition of the association and  
22 order an election by the voters in the municipality under Section  
23 142.105 regarding whether a public employer may meet and confer  
24 under this subchapter.

25 Sec. 142.104. CERTIFICATION ELECTION. (a) Except as  
26 provided by Subsection (b), a certification election ordered under  
27 Section 142.103(a)(3) to determine whether a firefighters

1 association represents a majority of the covered firefighters shall  
2 be conducted according to procedures agreeable to the 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 firefighters  
13 eligible to sign the petition for recognition, all the associations  
14 named in any petition shall share equally the costs of the election.

15 Sec. 142.105. ELECTION TO AUTHORIZE OPERATING UNDER THIS  
16 SUBCHAPTER. (a) The governing body of a municipality that receives  
17 a petition for recognition under Section 142.103 may order an  
18 election to determine whether a public employer may meet and confer  
19 under this subchapter.

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

25 (c) The ballot for an election ordered under this section  
26 shall be printed to allow voting for or against the proposition:  
27 "Authorizing \_\_\_\_\_ (name of the municipality) to operate under

1 the state law allowing a municipality to meet and confer and make  
2 agreements with the association representing municipal  
3 firefighters as provided by state law, preserving the prohibition  
4 against strikes and organized work stoppages, and providing  
5 penalties for strikes and organized work stoppages."

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

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

13 (f) If an election authorized under this section is held, an  
14 association may not submit a petition for recognition to the  
15 governing body of the municipality under Section 142.103 before the  
16 second anniversary of the date of the election.

17 Sec. 142.106. CHANGE OR MODIFICATION OF RECOGNITION. (a)  
18 The firefighters may modify or change the recognition of the  
19 association granted under this subchapter by filing with the  
20 governing body of the municipality a petition signed by a majority  
21 of all covered firefighters.

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

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

25 (2) order a certification election in accordance with  
26 Section 142.104 regarding whether to do so.

27 Sec. 142.107. STRIKES PROHIBITED. (a) A firefighter

1 employed by a municipality may not engage in a strike or organized  
2 work stoppage against this state or the municipality.

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

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

10 Sec. 142.108. RECOGNITION OF FIREFIGHTERS ASSOCIATION. (a)  
11 A public employer in a municipality that chooses to meet and confer  
12 under this subchapter shall recognize an association that is  
13 recognized under Section 142.103 or 142.104 as the sole and  
14 exclusive bargaining agent for the covered firefighters described  
15 in the petition for recognition, excluding the head of the fire  
16 department and excluding the employees exempt under Subsection (b),  
17 in accordance with this subchapter and the petition.

18 (b) For the purposes of Subsection (a), exempt employees are  
19 the employees appointed by the head of the fire department of the  
20 municipality under Section 143.014 or that are exempt by the mutual  
21 agreement of the recognized firefighters association and the public  
22 employer.

23 (c) The public employer shall recognize the firefighters  
24 association until recognition of the association is withdrawn, in  
25 accordance with Section 142.106, by a majority of the firefighters  
26 eligible to sign a petition for recognition.

27 Sec. 142.109. GENERAL PROVISIONS RELATING TO AGREEMENTS.

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

10 (b) A meet and confer agreement under this subchapter must  
11 be written.

12 (c) This subchapter does not require a public employer or a  
13 recognized firefighters association to meet and confer on any issue  
14 or reach an agreement.

15 (d) A public employer and the recognized firefighters  
16 association may meet and confer only if the association does not  
17 advocate an illegal strike by public employees.

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

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

24 (2) collective bargaining under Chapter 174.

25 Sec. 142.110. SELECTION OF BARGAINING AGENT; BARGAINING  
26 UNIT. (a) The public employer's chief executive officer or the  
27 chief executive officer's designee shall select one or more persons

1 to represent the public employer as its sole and exclusive  
2 bargaining agent to meet and confer on issues related to the wages,  
3 hours of employment, and other terms and conditions of employment  
4 of firefighters by the municipality.

5 (b) A firefighters association may designate one or more  
6 persons to negotiate or bargain on the association's behalf.

7 (c) A municipality's bargaining unit is composed of all the  
8 firefighters of the municipality who are not the head of the fire  
9 department or exempt under Section 142.108(b).

10 Sec. 142.111. PROTECTED RIGHTS OF FIREFIGHTER. (a) For any  
11 disciplinary appeal, a member of the municipality's bargaining unit  
12 may be represented by the firefighters association or by any person  
13 the member selects.

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

21 Sec. 142.112. OPEN RECORDS. (a) A proposed meet and confer  
22 agreement and a document prepared and used by the municipality,  
23 including a public employer, in connection with the proposed  
24 agreement are available to the public under Chapter 552, Government  
25 Code, only after the agreement is ready to be ratified by the  
26 governing body of the municipality.

27 (b) This section does not affect the application of



1 Subchapter C, Chapter 552, Government Code, to a document prepared  
2 and used in connection with the agreement.

3 Sec. 142.113. OPEN DELIBERATIONS. A deliberation relating  
4 to meeting and conferring between a public employer and a  
5 firefighters association, a deliberation relating to an agreement  
6 or proposed agreement under this subchapter by a quorum of a  
7 firefighters association authorized to meet and confer, or a  
8 deliberation by a quorum of the sole and exclusive bargaining agent  
9 of the public employer authorized to meet and confer must be open to  
10 the public and comply with state law.

11 Sec. 142.114. RATIFICATION AND ENFORCEABILITY OF  
12 AGREEMENT. (a) An agreement under this subchapter is enforceable  
13 and binding on the public employer, the recognized firefighters  
14 association, and the firefighters covered by the meet and confer  
15 agreement only if:

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

18 (2) the recognized firefighters association ratified  
19 the agreement by conducting a secret ballot election at which only  
20 the firefighters of the municipality in the association were  
21 eligible to vote, and a majority of the votes cast at the election  
22 avored 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. 142.115. 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 firefighters  
13 association under Section 142.103 without conducting an election  
14 under Section 142.105 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 firefighters association after conducting an  
23 election under Section 142.105 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 142.105.

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

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

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

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

20        (g) If an election ordered under Subsection (b) is held, an  
21 association may not submit a petition for recognition to the  
22 governing body of the municipality under Section 142.103 before the  
23 second anniversary of the date of the election.

24        Sec. 142.116. ELECTION TO REPEAL AGREEMENT. (a) Not later  
25 than the 60th day after the date a meet and confer agreement is  
26 ratified by the governing body of the municipality and the  
27 recognized firefighters association, a petition calling for the

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

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

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

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

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

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

22 Sec. 142.117. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.  
23 A written meet and confer agreement ratified under this subchapter  
24 preempts, during the term of the agreement and to the extent of any  
25 conflict, all contrary state statutes, local ordinances, executive  
26 orders, civil service provisions, or rules adopted by the head of  
27 the fire department or municipality or by a division or agent of the

1 municipality, such as a personnel board or a civil service  
2 commission.

3 Sec. 142.118. PREEMPTION OF OTHER LAW. (a) This subchapter  
4 preempts all contrary local ordinances, executive orders,  
5 legislation, or rules adopted by a municipality.

6 (b) Section 617.002, Government Code, does not apply to an  
7 agreement made or an action taken under this subchapter.

8 Sec. 142.119. EFFECT ON EXISTING BENEFITS. This subchapter  
9 may not be construed as repealing any existing benefit provided by  
10 statute or ordinance concerning firefighters' compensation,  
11 pensions, retirement plans, hours of work, conditions of  
12 employment, or other emoluments, except as expressly provided in a  
13 ratified meet and confer agreement. This subchapter is in addition  
14 to the benefits provided by existing statutes and ordinances.

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