

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 with a population of 50,000 or more that employs firefighters.

(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 fire protection personnel under Section 419.021, Government Code,

1 and who is employed by a municipality.

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

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

13 Sec. 142.103. PETITION FOR RECOGNITION: ELECTION OR ACTION
14 BY GOVERNING BODY. (a) Not later than the 30th day after the date
15 the governing body of a municipality receives from a firefighters
16 association a petition signed by the majority of all firefighters,
17 excluding the head of the fire department for the municipality and
18 excluding the employees exempt under Section 142.108(b), that
19 requests recognition of the association as the sole and exclusive
20 bargaining agent for all the firefighters employed by the
21 municipality, excluding the head of the fire department for the
22 municipality and excluding the exempt employees, the governing body
23 shall:

24 (1) grant recognition of the association as requested
25 in the petition and find that a public employer may meet and confer
26 under this subchapter without conducting an election by the voters
27 in the municipality under Section 142.105;

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

5 (3) order a certification election under Section
6 142.104 to determine whether the association represents a majority
7 of the affected firefighters.

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

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

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

23 Sec. 142.104. CERTIFICATION ELECTION. (a) Except as
24 provided by Subsection (b), a certification election ordered under
25 Section 142.103(a)(3) to determine whether a firefighters
26 association represents a majority of the covered firefighters shall
27 be conducted according to procedures agreeable to the parties.

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

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

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

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

18 (b) An election ordered under this section must be held on
19 the first authorized uniform election date prescribed by Chapter
20 41, Election Code, that occurs after the date the governing body of
21 the municipality orders the election and that allows sufficient
22 time to comply with other requirements of law.

23 (c) The ballot for an election ordered under this section
24 shall be printed to allow voting for or against the proposition:
25 "Authorizing _____ (name of the municipality) to operate under
26 the state law allowing a municipality to meet and confer and make
27 agreements with the association representing municipal

1 firefighters as provided by state law, preserving the prohibition
2 against strikes and organized work stoppages, and providing
3 penalties for strikes and organized work stoppages."

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

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

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

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

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

21 (1) recognize the change or modification as provided
22 by the petition; or

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

25 Sec. 142.107. STRIKES PROHIBITED. (a) A firefighter
26 employed by a municipality may not engage in a strike or organized
27 work stoppage against this state or the municipality.

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

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

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

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

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

25 Sec. 142.109. GENERAL PROVISIONS RELATING TO AGREEMENTS.
26 (a) A municipality acting under this subchapter may not be denied
27 local control over the wages, salaries, rates of pay, hours of work,

1 or other terms and conditions of employment to the extent the public
2 employer and the firefighters association recognized as the sole
3 and exclusive bargaining agent under this subchapter agree as
4 provided by this subchapter, if the agreement is ratified and not
5 withdrawn in accordance with this subchapter. Applicable statutes
6 and applicable local orders, ordinances, and civil service rules
7 apply to an issue not governed by the meet and confer agreement.

8 (b) A meet and confer agreement under this subchapter must
9 be written.

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

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

16 Sec. 142.110. SELECTION OF BARGAINING AGENT; BARGAINING
17 UNIT. (a) The public employer's chief executive officer or the
18 chief executive officer's designee shall select one or more persons
19 to represent the public employer as its sole and exclusive
20 bargaining agent to meet and confer on issues related to the wages,
21 hours of employment, and other terms and conditions of employment
22 of firefighters by the municipality.

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

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

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

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

12 Sec. 142.112. OPEN RECORDS. (a) A proposed meet and confer
13 agreement and a document prepared and used by the municipality,
14 including a public employer, in connection with the proposed
15 agreement are available to the public under Chapter 552, Government
16 Code, only after the agreement is ratified by the governing body of
17 the municipality.

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

21 Sec. 142.113. OPEN DELIBERATIONS. A deliberation relating
22 to meeting and conferring between a public employer and a
23 firefighters association, a deliberation relating to an agreement
24 or proposed agreement under this subchapter by a quorum of a
25 firefighters association authorized to meet and confer, or a
26 deliberation by a member of a public employer authorized to meet and
27 confer must be open to the public and comply with state law.

1 Sec. 142.114. RATIFICATION AND ENFORCEABILITY OF
2 AGREEMENT. (a) An agreement under this subchapter is enforceable
3 and binding on the public employer, the recognized firefighters
4 association, and the firefighters covered by the meet and confer
5 agreement only if:

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

8 (2) the recognized firefighters association ratified
9 the agreement by conducting a secret ballot election at which only
10 the firefighters of the municipality in the association were
11 eligible to vote, and a majority of the votes cast at the election
12 avored ratifying the agreement.

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

18 (c) A state district court of a judicial district in which
19 the municipality is located has jurisdiction to hear and resolve a
20 dispute under the ratified meet and confer agreement on the
21 application of a party to the agreement aggrieved by an action or
22 omission of the other party when the action or omission is related
23 to a right, duty, or obligation provided by the agreement. The
24 court may issue proper restraining orders, temporary and permanent
25 injunctions, or any other writ, order, or process, including
26 contempt orders, that are appropriate to enforcing the agreement.

27 Sec. 142.115. ELECTION TO REPEAL AGREEMENT. (a) Not later

1 than the 60th day after the date a meet and confer agreement is
2 ratified by the governing body of the municipality and the
3 recognized firefighters association, a petition calling for the
4 repeal of the agreement signed by a number of registered voters
5 residing in the municipality equal to at least 10 percent of the
6 votes cast at the most recent general election held in the
7 municipality may be presented to the person charged with ordering
8 an election under Section 3.004, Election Code.

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

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

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

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

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

26 Sec. 142.116. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.
27 A written meet and confer agreement ratified under this subchapter

1 preempts, during the term of the agreement and to the extent of any
2 conflict, all contrary state statutes, local ordinances, executive
3 orders, civil service provisions, or rules adopted by the head of
4 the fire department or municipality or by a division or agent of the
5 municipality, such as a personnel board or a civil service
6 commission.

7 Sec. 142.117. PREEMPTION OF OTHER LAW. (a) This subchapter
8 preempts all contrary local ordinances, executive orders,
9 legislation, or rules adopted by a municipality.

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

12 Sec. 142.118. EFFECT ON EXISTING BENEFITS. This subchapter
13 may not be construed as repealing any existing benefit provided by
14 statute or ordinance concerning firefighters' compensation,
15 pensions, retirement plans, hours of work, conditions of
16 employment, or other emoluments, except as expressly provided in a
17 ratified meet and confer agreement. This subchapter is in addition
18 to the benefits provided by existing statutes and ordinances.

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

COMMITTEE AMENDMENT NO. 1

Amend H.B. No. 2892 as follows:

(1) On page 1, line 14, strike "with" and substitute ":".

(2) On page 1, line 15, strike "a population of 50,000 or more that employs firefighters." and substitute the following:

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

(2) that has adopted Chapter 143.

(3) On page 2, line 25, strike "find that" and substitute "determine by majority vote regarding whether"

(4) On page 4, strike lines 18-22 and substitute the following:

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

(5) On page 5, line 14, strike "first" and substitute "second".

(6) On page 7, between lines 15 and 16, insert the following:

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

(1) municipal civil service under Chapter 143; or

(2) collective bargaining under Chapter 174.

1 (7) On page 8, line 16, insert "ready to be" between "is" and
2 "ratified".

3 (8) On page 8, line 26, strike "by a member of a public
4 employer" and substitute "by a quorum of the sole and exclusive
5 bargaining agent of the public employer".

6 (9) On page 9, between lines 26 and 27, insert the
7 following:

8 Sec. 142.115. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
9 OPERATE UNDER THIS SUBCHAPTER. (a) The governing body of a
10 municipality that granted recognition of a firefighters
11 association under Section 142.103 without conducting an election
12 under Section 142.105 may withdraw recognition of the association
13 by providing to the association not less than 90 days' written
14 notice that:

15 (1) the governing body is withdrawing recognition of
16 the association; and

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

19 (b) The governing body of a municipality that granted
20 recognition of a firefighters association after conducting an
21 election under Section 142.105 may order an election to determine
22 whether a public employer may continue to meet and confer under this
23 subchapter. The governing body may not order an election under this
24 subsection until the second anniversary of the date of the election
25 under Section 142.105.

26 (c) An election ordered under Subsection (b) must be held as
27 part of the next regularly scheduled general election for municipal

1 officers that occurs after the date the governing body of the
2 municipality orders the election and that allows sufficient time to
3 prepare the ballot in compliance with other requirements of law.

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

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

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

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

22 (10) On page 9, line 27, strike "142.115" and substitute
23 "142.116".

24 (11) On page 10, lines 16 and 17, strike "or at a special
25 election called by the governing body of the municipality for that
26 purpose".

27 (12) On page 10, line 26, strike "142.116" and substitute

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1 "142.117".

2 (13) On page 11, line 7, strike "142.117" and substitute

3 "142.118".

4 (14) On page 11, line 12, strike "142.118" and substitute

5 "142.119".

6 Talton