

By: Luna (Senate Sponsor - Gallegos) H.B. No. 2892
(In the Senate - Received from the House April 25, 2005;
April 26, 2005, read first time and referred to Committee on
Intergovernmental Relations; May 6, 2005, reported adversely, with
favorable Committee Substitute by the following vote: Yeas 5,
Nays 0; May 6, 2005, sent to printer.)

COMMITTEE SUBSTITUTE FOR H.B. No. 2892 By: Gallegos

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

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

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

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

(1) grant recognition of the association as requested
in the petition and determine by majority vote regarding whether a
public employer may meet and confer under this subchapter without
conducting an election by the voters in the municipality under
Section 142.105;

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

142.105 regarding whether a public employer may meet and confer under this subchapter; or

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

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

(1) grant recognition of the association as requested in the petition for recognition and determine by majority vote that a public employer may meet and confer under this subchapter without conducting an election by the voters in the municipality under Section 142.105; or

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

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

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

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

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

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

(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.

(c) The ballot for an election ordered under this section shall be printed to allow voting for or against the proposition: "Authorizing _____ (name of the municipality) to operate under the state law allowing a municipality to meet and confer and make agreements with the association representing municipal firefighters as provided by state law, preserving the prohibition against strikes and organized work stoppages, and providing penalties for strikes and organized work stoppages."

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

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

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

Sec. 142.106. CHANGE OR MODIFICATION OF RECOGNITION. (a) The firefighters may modify or change the recognition of the association granted under this subchapter by filing with the

governing body of the municipality a petition signed by a majority of all covered firefighters.

(b) The governing body of the municipality may:

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

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

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

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

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

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

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

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

Sec. 142.109. GENERAL PROVISIONS RELATING TO AGREEMENTS. (a) A municipality acting under this subchapter may not be denied local control over the wages, salaries, rates of pay, hours of work, or other terms and conditions of employment to the extent the public employer and the firefighters association recognized as the sole and exclusive bargaining agent under this subchapter agree as provided by this subchapter, if the agreement is ratified and not withdrawn in accordance with this subchapter. Applicable statutes and applicable local orders, ordinances, and civil service rules apply to an issue not governed by the meet and confer agreement.

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

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

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

(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.

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

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

(c) A municipality's bargaining unit is composed of all the

4-1 firefighters of the municipality who are not the head of the fire
4-2 department or exempt under Section 142.108(b).

4-3 Sec. 142.111. PROTECTED RIGHTS OF FIREFIGHTER. (a) For any
4-4 disciplinary appeal, a member of the municipality's bargaining unit
4-5 may be represented by the firefighters association or by any person
4-6 the member selects.

4-7 (b) A meet and confer agreement ratified under this
4-8 subchapter may not interfere with the right of a member of a
4-9 bargaining unit to pursue allegations of discrimination based on
4-10 race, creed, color, national origin, religion, age, sex, or
4-11 disability with the Texas Workforce Commission civil rights
4-12 division or the federal Equal Employment Opportunity Commission or
4-13 to pursue affirmative action litigation.

4-14 Sec. 142.112. OPEN RECORDS. (a) A proposed meet and confer
4-15 agreement and a document prepared and used by the municipality,
4-16 including a public employer, in connection with the proposed
4-17 agreement are available to the public under Chapter 552, Government
4-18 Code, only after the agreement is ready to be ratified by the
4-19 governing body of the municipality.

4-20 (b) This section does not affect the application of
4-21 Subchapter C, Chapter 552, Government Code, to a document prepared
4-22 and used in connection with the agreement.

4-23 Sec. 142.113. OPEN DELIBERATIONS. (a) A deliberation
4-24 relating to meeting and conferring between a public employer and a
4-25 firefighters association, a deliberation relating to an agreement
4-26 or proposed agreement under this subchapter by a quorum of a
4-27 firefighters association authorized to meet and confer, or a
4-28 deliberation by a quorum of the sole and exclusive bargaining agent
4-29 of the public employer authorized to meet and confer must be open to
4-30 the public and comply with state law.

4-31 (b) Subsection (a) may not be construed to prohibit the
4-32 representative of the public employer or the representatives of the
4-33 firefighters association from conducting private caucuses that are
4-34 not open to the public during meet and confer negotiations.

4-35 Sec. 142.114. RATIFICATION AND ENFORCEABILITY OF
4-36 AGREEMENT. (a) An agreement under this subchapter is enforceable
4-37 and binding on the public employer, the recognized firefighters
4-38 association, and the firefighters covered by the meet and confer
4-39 agreement only if:

4-40 (1) the governing body of the municipality ratified
4-41 the agreement by a majority vote; and

4-42 (2) the recognized firefighters association ratified
4-43 the agreement by conducting a secret ballot election at which only
4-44 the firefighters of the municipality in the association were
4-45 eligible to vote, and a majority of the votes cast at the election
4-46 avored ratifying the agreement.

4-47 (b) A meet and confer agreement ratified as described by
4-48 Subsection (a) may establish a procedure by which the parties agree
4-49 to resolve disputes related to a right, duty, or obligation
4-50 provided by the agreement, including binding arbitration on a
4-51 question involving interpretation of the agreement.

4-52 (c) A state district court of a judicial district in which
4-53 the municipality is located has jurisdiction to hear and resolve a
4-54 dispute under the ratified meet and confer agreement on the
4-55 application of a party to the agreement aggrieved by an action or
4-56 omission of the other party when the action or omission is related
4-57 to a right, duty, or obligation provided by the agreement. The
4-58 court may issue proper restraining orders, temporary and permanent
4-59 injunctions, or any other writ, order, or process, including
4-60 contempt orders, that are appropriate to enforcing the agreement.

4-61 Sec. 142.115. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
4-62 OPERATE UNDER THIS SUBCHAPTER. (a) The governing body of a
4-63 municipality that granted recognition of a firefighters
4-64 association under Section 142.103 without conducting an election
4-65 under Section 142.105 may withdraw recognition of the association
4-66 by providing to the association not less than 90 days' written
4-67 notice that:

4-68 (1) the governing body is withdrawing recognition of
4-69 the association; and

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

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

(c) An election ordered under Subsection (b) must be held as part of the next regularly scheduled general election for municipal officers that occurs 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.

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

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

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

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

Sec. 142.116. ELECTION TO REPEAL AGREEMENT. (a) Not later than the 60th day after the date a meet and confer agreement is ratified by the governing body of the municipality and the recognized firefighters association, a petition calling for the repeal of the agreement signed by a number of registered voters residing in the municipality equal to at least 10 percent of the votes cast at the most recent general election held in the municipality may be presented to the person charged with ordering an election under Section 3.004, Election Code.

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

(1) repeal the meet and confer agreement; or

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

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

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

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

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

(b) Section 617.002, Government Code, does not apply to an

6-1 agreement made or an action taken under this subchapter.

6-2 Sec. 142.119. EFFECT ON EXISTING BENEFITS. This subchapter
6-3 may not be construed as repealing any existing benefit provided by
6-4 statute or ordinance concerning firefighters' compensation,
6-5 pensions, retirement plans, hours of work, conditions of
6-6 employment, or other emoluments, except as expressly provided in a
6-7 ratified meet and confer agreement. This subchapter is in addition
6-8 to the benefits provided by existing statutes and ordinances.

6-9 SECTION 3. This Act takes effect September 1, 2005.

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