

By: Gallegos

S.B. No. 1417

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.