

By: Watson

S.B. No. 1183

A BILL TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 5, Local Government Code, is amended by adding Chapter 147 to read as follows:

CHAPTER 147. LOCAL CONTROL OF MUNICIPAL EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES

Sec. 147.001. APPLICABILITY. (a) This chapter applies only to a municipality with a population of 650,000 or more that operates under a city manager form of government.

(b) This chapter does not apply to:

(1) a municipality to which Chapter 146 applies;

(2) firefighters, police officers, or emergency medical services personnel who are covered by other meet and confer or collective bargaining provisions;

(3) a municipality with a population of one million or more that has adopted Chapter 174;

(4) a municipality with a population of one million or more that has not adopted Chapter 143; or

(5) an employee association in which employees described by Subdivision (2) participate, in connection with the association's representation of those employees.

1 Sec. 147.002. DEFINITIONS. In this chapter:

2 (1) "Appointed employee" means any municipal employee
3 who is appointed by the municipality's governing body.

4 (2) "Covered employees" means all employees of a
5 municipality, other than:

6 (A) appointed employees;

7 (B) the city manager;

8 (C) assistant city managers;

9 (D) department directors;

10 (E) assistant department directors;

11 (F) the city attorney;

12 (G) not more than five attorneys employed by the
13 city attorney's office and identified by the city attorney for
14 purposes of this subdivision;

15 (H) cadets or trainees enrolled in a training
16 program for police officers, firefighters, or emergency medical
17 services personnel;

18 (I) an employee described by Section
19 147.001(b)(2);

20 (J) any employee designated under Section
21 147.010(a) as a bargaining agent for the public employer; and

22 (K) any employee designated as exempt from the
23 bargaining unit by the mutual agreement of the recognized employee
24 association and the public employer.

25 (3) "Emergency medical services personnel" means any
26 municipal employees:

27 (A) who are employed in a municipal department

1 that has as its primary function providing emergency medical
2 services; and

3 (B) whose duties require that the employees be
4 certified under Chapter 773, Health and Safety Code.

5 (4) "Employee association" means an organization in
6 which covered employees participate and that exists for the
7 purpose, wholly or partly, of dealing with one or more employers,
8 whether public or private, concerning grievances, labor disputes,
9 wages, rates of pay, hours of employment, or conditions of work
10 affecting public employees and whose members pay dues by means of an
11 automatic payroll deduction.

12 (5) "Public employer" means any municipality or
13 agency, board, commission, or political subdivision controlled by a
14 municipality that is required to establish the wages, salaries,
15 rates of pay, hours, working conditions, and other terms and
16 conditions of employment of public employees. The term may
17 include, under appropriate circumstances, a mayor, manager,
18 administrator of a municipality, municipal governing body,
19 director of personnel, personnel board, or one or more other
20 officials regardless of the name by which they are designated.

21 Sec. 147.003. GENERAL PROVISIONS RELATING TO AGREEMENTS AND
22 RECOGNITION. (a) A municipality may not be denied local control
23 over wages, salaries, rates of pay, hours of work, other terms and
24 conditions of employment, or other state-mandated personnel
25 issues. A public employer may enter into a mutual agreement
26 governing these issues with an employee association recognized
27 under this chapter as the sole and exclusive bargaining agent for

1 all covered employees that does not advocate the illegal right to
2 strike by municipal employees. The applicable statutes, local
3 ordinances, and civil service rules govern a term or condition of
4 employment on which the public employer and the association do not
5 agree.

6 (b) An agreement under this chapter must be written.

7 (c) This chapter does not require the public employer and
8 the recognized employee association to meet and confer or reach an
9 agreement on any issue.

10 (d) This chapter does not authorize an agreement regarding
11 pension or pension-related matters governed by statute.

12 Sec. 147.004. PETITION FOR RECOGNITION: ELECTION OR ACTION
13 BY GOVERNING BODY. (a) Not later than the 30th day after the date
14 the governing body of a municipality receives from an employee
15 association a petition signed by the majority of all covered
16 employees that requests recognition of the association as the sole
17 and exclusive bargaining agent for all the covered employees, the
18 governing body shall:

19 (1) grant recognition of the association as requested
20 in the petition and find that a public employer may meet and confer
21 under this chapter without conducting an election by the voters in
22 the municipality under Section 147.006;

23 (2) defer granting recognition of the association and
24 order an election by the voters in the municipality under Section
25 147.006 regarding whether a public employer may meet and confer
26 under this chapter; or

27 (3) order a certification election under Section

1 147.005 to determine whether the association represents a majority
2 of the covered employees.

3 (b) If the governing body of a municipality orders a
4 certification election under Subsection (a)(3) and the association
5 named in the petition is certified to represent a majority of the
6 covered employees, the governing body shall, not later than the
7 30th day after the date that results of that election are certified:

8 (1) grant recognition of the association as requested
9 in the petition for recognition and find that a public employer may
10 meet and confer under this chapter without conducting an election
11 by the voters in the municipality under Section 147.006; or

12 (2) defer granting recognition of the association and
13 order an election by the voters in the municipality under Section
14 147.006 regarding whether a public employer may meet and confer
15 under this chapter.

16 Sec. 147.005. CERTIFICATION ELECTION. (a) Except as
17 provided by Subsection (b), a certification election ordered under
18 Section 147.004(a)(3) to determine whether an employee association
19 represents a majority of the covered employees shall be conducted
20 according to procedures agreeable to the parties.

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

25 (c) The results of an election shall be certified if the
26 employee association receives a majority of valid votes cast in the
27 election.

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

7 Sec. 147.006. ELECTION TO AUTHORIZE OPERATING UNDER THIS
8 CHAPTER. (a) The governing body of a municipality that receives a
9 petition for recognition under Section 147.004 may order an
10 election to determine whether a public employer may meet and confer
11 under this chapter.

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

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

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

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

5 (f) If an election authorized under this section is held, an
6 employee association may not submit a petition for recognition to
7 the governing body of the municipality under Section 147.004 before
8 the second anniversary of the date of the election.

9 Sec. 147.007. CHANGE OR MODIFICATION OF RECOGNITION.

10 (a) The covered employees may modify or change the recognition of
11 the employee association granted under this chapter by filing with
12 the governing body of the municipality a petition signed by a
13 majority of all covered employees.

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

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

17 (2) order a certification election in accordance with
18 Section 147.005 regarding whether to do so.

19 Sec. 147.008. STRIKES PROHIBITED. (a) A municipal
20 employee may not engage in a strike or organized work stoppage
21 against this state or the municipality.

22 (b) A municipal employee who participates in a strike
23 forfeits any civil service rights, reemployment rights, and other
24 rights, benefits, or privileges the employee may have as a result of
25 the employee's employment or prior employment with the
26 municipality.

27 (c) This section does not affect the right of a person to

1 cease work if the person is not acting in concert with others in an
2 organized work stoppage.

3 Sec. 147.009. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) A
4 public employer in a municipality that chooses to meet and confer
5 under this chapter shall recognize an employee association that is
6 recognized under Section 147.004 or 147.005 as the sole and
7 exclusive bargaining agent for the covered employees.

8 (b) The public employer shall recognize the employee
9 association until recognition of the association is withdrawn, in
10 accordance with Section 147.007, by a majority of the covered
11 employees.

12 Sec. 147.010. SELECTION OF BARGAINING AGENT. (a) The
13 public employer's chief executive officer or the chief executive
14 officer's designee shall select one or more persons to represent
15 the public employer as its sole and exclusive bargaining agent to
16 meet and confer on issues related to the wages, hours of employment,
17 and other terms and conditions of employment of covered employees.

18 (b) An employee association may designate one or more
19 persons to negotiate or bargain on the association's behalf.

20 Sec. 147.011. BARGAINING UNIT. (a) A municipality's
21 bargaining unit is composed of all the covered employees.

22 (b) The municipality and the recognized association, by
23 agreement, may partition the bargaining unit into two or more
24 separate bargaining units to facilitate negotiations and to
25 safeguard the rights of employees to effective representation. If
26 a bargaining agent has been recognized by the governing body, any
27 partitioning of the bargaining unit does not alter the recognition

1 of the bargaining agent.

2 Sec. 147.012. PROTECTED RIGHTS OF EMPLOYEES. (a) A meet
3 and confer agreement ratified under this chapter may not interfere
4 with the right of a member of a bargaining unit to pursue
5 allegations of discrimination based on race, creed, color, national
6 origin, religion, age, sex, or disability with the Texas Workforce
7 Commission civil rights division or the federal Equal Employment
8 Opportunity Commission or to pursue affirmative action litigation.

9 (b) For the purpose of any disciplinary or individual
10 grievance proceeding, a member of the bargaining unit is entitled
11 to be represented by any person of the member's choice or by the
12 recognized employee association.

13 Sec. 147.013. OPEN RECORDS. (a) A proposed meet and
14 confer agreement and a document prepared and used by the
15 municipality, including a public employer, in connection with the
16 proposed agreement are available to the public under Chapter 552,
17 Government Code, only after the agreement is ready to be ratified by
18 the governing body of the municipality.

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

22 Sec. 147.014. OPEN DELIBERATIONS. (a) Deliberations
23 relating to a meet and confer agreement or proposed agreement under
24 this chapter between representatives of the public employer and
25 representatives of the employee association recognized under this
26 chapter as the sole and exclusive bargaining agent for the covered
27 employees must be open to the public and comply with state law.

1 (b) Subsection (a) may not be construed to prohibit the
2 representatives of the public employer or the representatives of
3 the recognized employee association from conducting private
4 caucuses that are not open to the public during meet and confer
5 negotiations.

6 Sec. 147.015. RATIFICATION AND ENFORCEABILITY OF
7 AGREEMENT. (a) An agreement under this chapter is enforceable and
8 binding on the public employer, the recognized employee
9 association, and the employees covered by the meet and confer
10 agreement only if:

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

13 (2) the recognized employee association ratified the
14 agreement by conducting a secret ballot election at which the
15 majority of the covered employees who voted in the election and are
16 members of the association favored ratifying the agreement.

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

22 (c) A state district court of a judicial district in which
23 the municipality is located has jurisdiction to hear and resolve a
24 dispute under the ratified meet and confer agreement on the
25 application of a party to the agreement aggrieved by an action or
26 omission of the other party when the action or omission is related
27 to a right, duty, or obligation provided by the agreement. The

1 court may issue proper restraining orders, temporary and permanent
2 injunctions, or any other writ, order, or process, including
3 contempt orders, that are appropriate to enforcing the agreement.

4 Sec. 147.016. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
5 OPERATE UNDER THIS CHAPTER. (a) The governing body of a
6 municipality that granted recognition of an employee association
7 under Section 147.004 without conducting an election under Section
8 147.006 may withdraw recognition of the association by providing to
9 the association not less than 90 days' written notice that:

10 (1) the governing body is withdrawing recognition of
11 the association; and

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

14 (b) The governing body of a municipality that granted
15 recognition of an employee association after conducting an election
16 under Section 147.006 may order an election to determine whether a
17 public employer may continue to meet and confer under this chapter.
18 The governing body may not order an election under this subsection
19 until the second anniversary of the date of the election under
20 Section 147.006.

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

26 (d) The ballot for an election ordered under Subsection (b)
27 shall be printed to permit voting for or against the proposition:

1 "Authorizing _____ (name of the municipality) to continue to
2 operate under the state law allowing a municipality to meet and
3 confer and make agreements with the association representing
4 municipal employees as provided by state law, preserving the
5 prohibition against strikes and organized work stoppages, and
6 providing penalties for strikes and organized work stoppages."

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

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

13 (g) If an election ordered under Subsection (b) is held, an
14 employee association may not submit a petition for recognition to
15 the governing body of the municipality under Section 147.004 before
16 the second anniversary of the date of the election.

17 Sec. 147.017. ELECTION TO REPEAL AGREEMENT. (a) Not later
18 than the 45th day after the date a meet and confer agreement is
19 ratified by the governing body of the municipality and the
20 recognized employee association, a petition calling for the repeal
21 of the agreement signed by at least 10 percent of the qualified
22 voters residing in the municipality may be presented to the person
23 charged with ordering an election under Section 3.004, Election
24 Code.

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

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

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

3 (c) An election called under Subsection (b)(2) may be held
4 as part of the next regularly scheduled general election for the
5 municipality or at a special election called by the governing body
6 for that purpose. The ballot shall be printed to permit voting for
7 or against the proposition: "Repeal the meet and confer agreement
8 ratified on _____ (date agreement was ratified) by the _____
9 (name of the governing body of the municipality) and the _____ (name
10 of the recognized municipal employee association) concerning
11 wages, salaries, rates of pay, hours of work, and other terms of
12 employment."

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

15 Sec. 147.018. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.
16 A written meet and confer agreement ratified under this chapter
17 preempts, during the term of the agreement and to the extent of any
18 conflict, all contrary state statutes, local ordinances, executive
19 orders, civil service provisions, or rules adopted by this state or
20 a political subdivision or agent of this state, including a
21 personnel board, civil service commission, or home-rule
22 municipality, other than a statute, ordinance, executive order,
23 civil service provision, or rule regarding pensions or
24 pension-related matters.

25 SECTION 2. This Act takes effect September 1, 2007.