

SENATE AMENDMENTS

2nd Printing

By: Davis of Dallas

H.B. No. 866

A BILL TO BE ENTITLED

AN ACT

relating to local control of firefighter and police officer employment matters in certain municipalities.

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 FIREFIGHTER AND POLICE OFFICER
EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES WITH POPULATION
OF ONE MILLION OR MORE

Sec. 147.001. APPLICABILITY. This chapter applies only to a municipality with a population of one million or more, but does not apply to a municipality that has adopted Chapter 143 or 174.

Sec. 147.002. DEFINITIONS. In this chapter:

(1) "Firefighter" means a firefighter employed by the municipality who is covered by the municipality's fire pension plan and is classified by the municipality as exempt. The term does not include a firefighter with a rank that is above that of battalion chief or section chief.

(2) "Firefighter employee group" means an organization:

(A) in which, on or before September 1, 2007, firefighters of the municipality participated and paid dues via automatic payroll deduction; and

(B) that exists for the purpose, in whole or in

1 part, of dealing with the municipality concerning grievances, labor
2 disputes, wages, rates of pay, hours of employment, or conditions
3 of employment affecting firefighters.

4 (3) "Police officer" means a sworn police officer
5 employed by the municipality who is covered by the municipality's
6 police pension plan and is classified by the municipality as
7 exempt. The term does not include a police officer with a rank
8 above that of captain, a civilian, or a municipal marshal.

9 (4) "Police officer employee group" means an
10 organization:

11 (A) in which, on or before September 1, 2007, at
12 least three percent of the police officers of the municipality
13 participated and paid dues via automatic payroll deduction; and

14 (B) that exists for the purpose, in whole or in
15 part, of dealing with the municipality concerning grievances, labor
16 disputes, wages, rates of pay, hours of employment, or conditions
17 of employment affecting police officers.

18 Sec. 147.003. MEET AND CONFER TEAM; NEGOTIATIONS. (a) A
19 meet and confer team is created under this section and consists of
20 the following members:

21 (1) members representing the firefighter employee
22 groups in the municipality, provided each group may appoint only
23 one firefighter of the municipality to serve as a member of the
24 team; and

25 (2) members representing the police officer employee
26 groups in the municipality, provided each group may appoint only
27 one police officer of the municipality to serve as a member of the

1 team.

2 (b) The meet and confer team represents all firefighters and
3 police officers in the municipality and shall negotiate with the
4 municipality in an effort to reach an agreement on concerns shared
5 by the firefighters and police officers regarding terms of
6 employment, including concerns relating to wages, benefits, and
7 other working conditions but excluding concerns relating to
8 pensions. Only the meet and confer team created under this section
9 may represent the firefighters or police officers of the
10 municipality in the capacity described by this subsection, except
11 that the team may be accompanied by legal counsel.

12 (c) Concerns relating to affirmative action, employment
13 discrimination, hiring, and promotions may be discussed by
14 individual firefighter and police officer associations independent
15 of the meet and confer team.

16 (d) Expenses associated with the meet and confer team must
17 be divided pro rata among each firefighter employee group and
18 police officer employee group based on the number of sworn fire or
19 police department members represented by each group.

20 (e) A municipality may designate one or more persons to meet
21 and confer on the municipality's behalf.

22 Sec. 147.004. GENERAL PROVISIONS RELATING TO AGREEMENTS,
23 RECOGNITION, AND STRIKES. (a) A municipality may not be denied
24 local control over the wages, salaries, rates of pay, hours of work,
25 and other terms of employment, or other state-mandated personnel
26 issues, if the municipality and the meet and confer team come to a
27 mutual agreement on any of the terms of employment. If an agreement

1 is not reached, the state laws, local ordinances, and civil service
2 rules remain unaffected. All agreements shall be written. Nothing
3 in this chapter requires either party to meet and confer on any
4 issue or reach an agreement.

5 (b) A municipality may meet and confer only if the meet and
6 confer team does not advocate the illegal right to strike by public
7 employees.

8 (c) Firefighters and police officers of a municipality may
9 not engage in strikes against this state or a political subdivision
10 of this state. A firefighter or police officer who participates in
11 a strike forfeits all civil service rights, reemployment rights,
12 and any other rights, benefits, or privileges the firefighter or
13 police officer enjoys as a result of employment or prior
14 employment.

15 (d) In this section, "strike" means failing to report for
16 duty in concerted action with others, wilfully being absent from an
17 assigned position, stopping work, abstaining from the full,
18 faithful, and proper performance of the duties of employment, or
19 interfering with the operation of a municipality. However, this
20 section does not prohibit a firefighter or police officer from
21 conferring with members of the municipal governing body about
22 conditions, compensation, rights, privileges, or obligations of
23 employment.

24 Sec. 147.005. PAYROLL DUES DEDUCTIONS. The municipality
25 may not prevent automatic payroll deductions for dues paid to a
26 firefighter employee group or police officer employee group.

27 Sec. 147.006. RECORDS AND MEETINGS. (a) An agreement made

1 under this chapter is public information for purposes of Chapter
2 552, Government Code. The agreement and any document prepared and
3 used by the municipality in connection with the agreement, except
4 for materials created during a municipality's caucuses and notes
5 that are otherwise privileged by law, are available to the public in
6 accordance with Chapter 552, Government Code, only after the
7 agreement is ratified by both parties.

8 (b) A meeting between the meet and confer team and any
9 persons designated to meet and confer on the municipality's behalf
10 is not subject to Chapter 551, Government Code.

11 (c) This section does not affect the application of
12 Subchapter C, Chapter 552, Government Code, to a document prepared
13 and used by the municipality in connection with the agreement.

14 Sec. 147.007. ENFORCEABILITY OF AGREEMENT. (a) A written
15 agreement made under this chapter between a municipality and the
16 meet and confer team is enforceable and binding on the
17 municipality, the meet and confer team, firefighter employee
18 groups, police officer employee groups, and the firefighters and
19 police officers covered by the agreement if:

20 (1) the municipality's governing body ratified the
21 agreement by a majority vote; and

22 (2) the agreement is ratified under Section 147.008.

23 (b) A state district court of the judicial district in which
24 a majority of the population of the municipality is located has full
25 authority and jurisdiction on the application of either party
26 aggrieved by an action or omission of the other party when the
27 action or omission is related to a right, duty, or obligation

1 provided by any written agreement ratified as required by this
2 chapter. The court may issue proper restraining orders, temporary
3 and permanent injunctions, and any other writ, order, or process,
4 including contempt orders, that are appropriate to enforcing any
5 written agreement ratified as required by this chapter.

6 Sec. 147.008. ELECTION TO RATIFY AGREEMENT. (a) The meet
7 and confer team shall call an election to ratify any agreement
8 reached with the municipality if the agreement has been approved by
9 five-sevenths of the members of the meet and confer team.

10 (b) All firefighters and police officers of the
11 municipality are eligible to vote in the election.

12 (c) An agreement may be ratified under this section only if
13 at least 65 percent of the votes cast in the election favor the
14 ratification.

15 (d) A firefighter or police officer who is not a member of a
16 firefighter employee group or a police officer employee group may
17 be assessed a fee for any cost associated with casting the
18 firefighter's or police officer's vote.

19 (e) The meet and confer team shall establish procedures for
20 the election by unanimous consensus.

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

ADOPTED

MAY 23 2007

FLOOR AMENDMENT NO. 1

BY: Roger W. N.
Secretary of the Senate

1 Amend H.B. No. 866 (senate committee printing) in SECTION 1
2 of the bill as follows:

3 (1) In added Subdivision (2), Section 147.002, Local
4 Government Code, strike added Paragraph (A) (page 1, lines 28
5 through 30), and substitute the following:

6 (A) in which firefighters of the municipality
7 have participated and paid dues via automatic payroll deduction
8 for at least one year; and

9 (2) In added Subdivision (4), Section 147.002, Local
10 Government Code, strike added Paragraph (A) (page 1, lines 42
11 through 44), and substitute the following:

12 (A) in which at least three percent of the police
13 officers of the municipality have participated and paid dues via
14 automatic payroll deduction for at least one year; and

15 (3) Immediately following added Section 147.003, Local
16 Government Code (page 2, between lines 15 and 16), insert the
17 following:

18 Sec. 147.0031. PETITION FOR RECOGNITION: ELECTION OR
19 ACTION BY GOVERNING BODY. (a) Not later than the 30th day after
20 the date the governing body of a municipality receives from the
21 meet and confer team a petition signed by a majority of all
22 police officers and a majority of all firefighters, excluding
23 the head of the police department, the head of the fire
24 department, and other excluded employees as described by Section
25 147.0035(b), that requests recognition of the meet and confer
26 team as the sole and exclusive bargaining agent for all the
27 police officers and firefighters employed by the municipality,
28 excluding the head of the police department, the head of the

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1 fire department, and other excluded employees as described by
2 Section 147.0035(b), the governing body shall:

3 (1) grant recognition of the meet and confer team as
4 requested in the petition and determine by majority vote that
5 the municipality may meet and confer under this chapter without
6 conducting an election by the voters in the municipality under
7 Section 147.0033;

8 (2) defer granting recognition of the meet and confer
9 team and order an election by the voters in the municipality
10 under Section 147.0033 regarding whether the municipality may
11 meet and confer under this chapter; or

12 (3) order a certification election under Section
13 147.0032 to determine whether the employee groups in the meet
14 and confer team represent a majority of the covered police
15 officers and a majority of the covered firefighters.

16 (b) If the governing body of a municipality orders a
17 certification election under Subsection (a)(3) and the employee
18 groups that are part of the meet and confer team are certified
19 to represent a majority of the covered police officers and a
20 majority of the covered firefighters, the governing body shall,
21 not later than the 30th day after the date that results of that
22 election are certified:

23 (1) grant recognition of the meet and confer team as
24 requested in the petition for recognition and determine by
25 majority vote that the municipality may meet and confer under
26 this chapter without conducting an election by the voters in the
27 municipality under Section 147.0033; or

28 (2) defer granting recognition of the meet and confer
29 team and order an election by the voters in the municipality
30 under Section 147.0033 regarding whether a public employer may



1 meet and confer under this chapter.

2 Sec. 147.0032. CERTIFICATION ELECTION. (a) Except as
3 provided by Subsection (b), a certification election ordered
4 under Section 147.0031(a)(3) to determine whether the employee
5 groups in the meet and confer team represent a majority of the
6 covered police officers and a majority of the covered
7 firefighters shall be conducted according to procedures
8 agreeable to the parties.

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

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

15 (d) Each employee group in the meet and confer team is
16 liable for the expenses of the certification election for the
17 employees the group represents.

18 Sec. 147.0033. ELECTION TO AUTHORIZE OPERATING UNDER THIS
19 CHAPTER. (a) The governing body of a municipality that receives
20 a petition for recognition under Section 147.0031 may order an
21 election to determine whether a public employer may meet and
22 confer under this chapter.

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

29 (c) The ballot for an election ordered under this section
30 shall be printed to permit voting for or against the

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

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

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

15 (f) If an election authorized under this section is held,
16 a meet and confer team may not submit a petition for recognition
17 to the governing body of the municipality under Section 147.0031
18 before the second anniversary of the date of the election.

19 Sec. 147.0034. WITHDRAWAL OF RECOGNITION. (a) The police
20 officers and firefighters may withdraw the recognition of the
21 meet and confer team granted under this chapter by filing with
22 the governing body of the municipality a petition signed by a
23 majority of all covered police officers and a majority of all
24 covered firefighters.

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

26 (1) withdraw recognition as provided by the petition;

27 or

28 (2) order a certification election in accordance with
29 Section 147.0032 regarding whether to do so.

30 Sec. 147.0035. RECOGNITION OF MEET AND CONFER TEAM. (a) A

1 public employer in a municipality that chooses to meet and
2 confer under this chapter shall recognize the meet and confer
3 team that is recognized under Section 147.0031 or 147.0033 as
4 the sole and exclusive bargaining agent for the police officers
5 and firefighters, excluding the head of the police department,
6 head of the fire department, and the employees exempt under
7 Subsection (b), in accordance with this chapter and the
8 petition.

9 (b) For the purposes of Subsection (a), exempt employees
10 are employees appointed by the head of the police department or
11 fire department in the classification immediately below that of
12 department head or that are exempt by the mutual agreement of
13 the meet and confer team and the municipality.

14 (c) The municipality shall recognize the meet and confer
15 team until recognition of the meet and confer team is withdrawn
16 in accordance with Section 147.0034 by a majority of the police
17 officers and a majority of the firefighters who are eligible to
18 sign a petition for recognition.

19 (4) In added Subsection (a), Section 147.004, Local
20 Government Code (page 2 lines 20 and 21), between "meet and
21 confer team" and "come to a mutual agreement", insert
22 "recognized under Section 147.0031 or 147.0033 as the sole and
23 exclusive bargaining agent for the covered police officers and
24 firefighters".

25 (5) Strike added Subsection (b), Section 147.006, Local
26 Government Code (page 2, lines 56 through 58).

27 (6) In added Subsection (c), Section 147.006, Local
28 Government Code (page 2, line 59), strike "(c)" and substitute
29 "(b)".

30 (7) Immediately following added Section 147.008, Local

1 Government Code (page 3, between lines 26 and 27), insert the
2 following:

3 Sec. 147.009. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
4 OPERATE UNDER THIS CHAPTER. (a) The governing body of a
5 municipality that granted recognition of a meet and confer team
6 under Section 147.0031 without conducting an election under
7 Section 147.0033 may withdraw recognition of the meet and confer
8 team by providing to the meet and confer team not less than 90
9 days' written notice that:

10 (1) the governing body is withdrawing recognition of
11 the meet and confer team; and

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

14 (b) The governing body of a municipality that granted
15 recognition of a meet and confer team after conducting an
16 election under Section 147.0033 may order an election to
17 determine whether a public employer may continue to meet and
18 confer under this chapter. The governing body may not order an
19 election under this subsection until the second anniversary of
20 the date of the election under Section 147.0033.

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

27 (d) The ballot for an election ordered under Subsection
28 (b) shall be printed to allow voting for or against the
29 proposition: "Authorizing (name of the municipality)
30 to continue to operate under the state law allowing a

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

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

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

13 (g) If an election ordered under Subsection (b) is held, a
14 meet and confer team may not submit a petition for recognition
15 to the governing body of the municipality under Section 147.0031
16 before the second anniversary of the date of the election.

17 Sec. 147.010. ELECTION TO REPEAL AGREEMENT. (a) Not later
18 than the 60th day after the date a meet and confer agreement is
19 ratified by the governing body of the municipality and the
20 firefighters and police officers under 147.008, a petition
21 calling for the repeal of the agreement signed by a number of
22 registered voters residing in the municipality equal to at least
23 10 percent of the votes cast at the most recent general election
24 held in the municipality may be presented to the person charged
25 with ordering an election under Section 3.004, Election Code.

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

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

29 (2) certify that the governing body is not repealing
30 the agreement and call an election to determine whether to

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1 repeal the agreement.

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

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

13 Sec. 147.010. EFFECT ON EXISTING BENEFITS AND RIGHTS. (a)
14 This chapter may not be construed to repeal any existing benefit
15 provided by statute or ordinance concerning police officers' or
16 firefighters' compensation, pensions, retirement plans, hours of
17 work, conditions of employment, or other emoluments except as
18 expressly provided in a ratified meet and confer agreement.
19 This chapter is in addition to the benefits provided by existing
20 statutes and ordinances.

21 (b) This chapter may not be construed to interfere with
22 the free speech right, guaranteed by the First Amendment to the
23 United States Constitution, of an individual firefighter or a
24 police officer to endorse or dissent from any agreement.

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 16, 2007

TO: Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB866** by Davis, Yvonne (Relating to local control of firefighter and police officer employment matters in certain municipalities.), **As Engrossed**

No fiscal implication to the State is anticipated.

Based on applicability criteria within the bill, it would apply only to the City of Dallas.

Local Government Impact

Because the bill would not have statewide impact on units of local government of the same type or class, no comment from this office is required by the rules of the House/Senate as to its probable fiscal implication on units of local government.

Source Agencies:

LBB Staff: JOB, DB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 25, 2007

TO: Honorable Kevin Bailey, Chair, House Committee on Urban Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB866 by Davis, Yvonne (Relating to local control of firefighter and police officer employment matters in certain municipalities.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

Based on applicability criteria within the bill, it would apply only to the City of Dallas.

Local Government Impact

Because the bill would not have statewide impact on units of local government of the same type or class, no comment from this office is required by the rules of the House/Senate as to its probable fiscal implication on units of local government.

Source Agencies:

LBB Staff: JOB, DB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

February 20, 2007

TO: Honorable Kevin Bailey, Chair, House Committee on Urban Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB866 by Davis, Yvonne (Relating to local control of firefighter and police officer employment matters in certain municipalities.), **As Introduced**

No fiscal implication to the State is anticipated.

Based on applicability criteria within the bill, it would apply only to the City of Dallas.

Local Government Impact

Because the bill would not have statewide impact on units of local government of the same type or class, no comment from this office is required by the rules of the House/Senate as to its probable fiscal implication on units of local government.

Source Agencies:

LBB Staff: JOB, DB