

By: McClendon, Gutierrez

H.B. No. 3686

Substitute the following for H.B. No. 3686:

By: Pierson

C.S.H.B. No. 3686

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 148 to read as follows:

CHAPTER 148. LOCAL CONTROL OF MUNICIPAL EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES

Sec. 148.001. APPLICABILITY. (a) This chapter applies only to a municipality with a population of more than one million that:

(1) has adopted Chapter 174; and

(2) is not covered by Chapter 146 or 147.

(b) This chapter does not apply to:

(1) firefighters or police officers who are covered by Subchapter B of Chapter 142, Subchapter H, I, or J of Chapter 143, or Chapter 174;

(2) an employee association in which employees described by Subdivision (1) participate; or

(3) employees of a municipally owned utility or other board or political subdivision whose wages, salaries, rates of pay, hours, working conditions, or other terms and conditions of employment are established and governed by an appointed board

independent from the municipal governing body.

Sec. 148.002. DEFINITIONS. In this chapter:

(1) "Confidential employee" means an employee:

(A) who has access to confidential or discretionary information regarding the formulation of the municipality's policies or procedures;

(B) whose functional responsibilities or knowledge concerning employee relations make the employee's membership in an employee organization incompatible with the employee's duties; or

(C) who is the executive secretary of the chief administrator or executive officer of a municipal department.

(2) "Covered employee" means an employee of a municipality, other than an employee who is not covered by the classified municipal civil service, a confidential employee, a firefighter or police officer who is covered by Subchapter H, I, or J of Chapter 143 or by Chapter 174, or a peace officer covered by Chapter 142.

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

(4) "Public employer" means any municipality that is required to establish the wages, salaries, rates of pay, hours,

working conditions, and other terms and conditions of employment of public employees. The term may include, under appropriate circumstances, a mayor, manager, administrator of a municipality, municipal governing body, director of personnel, or personnel board, or one or more other officials regardless of the name by which they are designated.

Sec. 148.003. GENERAL PROVISIONS RELATING TO AGREEMENTS AND RECOGNITION. (a) A municipality may not be denied local control over wages, salaries, rates of pay, hours of work, other terms and conditions of employment, or other state-mandated personnel issues. A public employer may enter into a mutual agreement governing these issues with an employee association recognized under this chapter as the sole and exclusive bargaining agent for all covered employees that does not advocate the illegal right to strike by municipal employees. The applicable statutes, local ordinances, and civil service rules govern a term or condition of employment on which the public employer and the association do not agree.

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

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

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

Sec. 148.004. 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 an employee

1 association a petition signed by the majority of all covered  
2 employees that requests recognition of the association as the sole  
3 and exclusive bargaining agent for all the covered employees, the  
4 governing body shall:

5 (1) grant recognition of the association as requested  
6 in the petition and find that a public employer may meet and confer  
7 under this chapter without conducting an election by the voters in  
8 the municipality under Section 148.006;

9 (2) defer granting recognition of the association and  
10 order an election by the voters in the municipality under Section  
11 148.006 regarding whether a public employer may meet and confer  
12 under this chapter; or

13 (3) order a certification election under Section  
14 148.005 to determine whether the association represents a majority  
15 of the covered employees.

16 (b) If the governing body of a municipality orders a  
17 certification election under Subsection (a)(3) and the association  
18 named in the petition is certified to represent a majority of the  
19 covered employees, the governing body shall, not later than the  
20 30th day after the date that results of that election are certified:

21 (1) grant recognition of the association as requested  
22 in the petition for recognition and find that a public employer may  
23 meet and confer under this chapter without conducting an election  
24 by the voters in the municipality under Section 148.006; or

25 (2) defer granting recognition of the association and  
26 order an election by the voters in the municipality under Section  
27 148.006 regarding whether a public employer may meet and confer

1 under this chapter.

2 Sec. 148.005. CERTIFICATION ELECTION. (a) Except as  
3 provided by Subsection (b), a certification election ordered under  
4 Section 148.004(a)(3) to determine whether an employee association  
5 represents a majority of the covered employees shall be conducted  
6 according to procedures agreeable to the parties.

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

11 (c) The results of an election shall be certified if the  
12 employee association receives a majority of the valid votes cast in  
13 the election.

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

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

22 Sec. 148.006. ELECTION TO AUTHORIZE OPERATING UNDER THIS  
23 CHAPTER. (a) The governing body of a municipality that receives a  
24 petition for recognition under Section 148.004 may order an  
25 election to determine whether a public employer may meet and confer  
26 under this chapter.

27 (b) An election ordered under this section must be held as

1 part of the next regularly scheduled general election for municipal  
2 officials that is held after the date the governing body of the  
3 municipality orders the election and that allows sufficient time to  
4 prepare the ballot in compliance with other requirements of law.

5 (c) The ballot for an election ordered under this section  
6 shall be printed to permit voting for or against the proposition:  
7 "Authorizing \_\_\_\_\_ (name of the municipality) to operate under  
8 the state law allowing a municipality to meet and confer and make  
9 agreements with the association representing municipal employees  
10 as provided by state law, preserving the prohibition against  
11 strikes and organized work stoppages, and providing penalties for  
12 strikes and organized work stoppages."

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

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

20 (f) If an election authorized under this section is held, an  
21 association may not submit a petition for recognition to the  
22 governing body of the municipality under Section 148.004 before the  
23 second anniversary of the date of the election.

24 Sec. 148.007. CHANGE OR MODIFICATION OF RECOGNITION. (a)  
25 Covered employees may modify, change, or withdraw the recognition  
26 of the employee association granted under this chapter by filing  
27 with the governing body of the municipality a petition signed by a

majority of all covered employees.

(b) The governing body of the municipality may:

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

(2) order a certification election in accordance with Section 148.005 regarding whether to do so.

Sec. 148.008. STRIKES PROHIBITED. (a) A municipal employee may not engage in a strike or organized work stoppage against this state or the municipality.

(b) A municipal employee who participates in a strike forfeits any civil service rights, reemployment rights, and other rights, benefits, or privileges the employee may have as a result of the employee'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. 148.009. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) A public employer in a municipality that chooses to meet and confer under this chapter shall recognize an association that is recognized under Section 148.004 or 148.005 as the sole and exclusive bargaining agent for the covered employees.

(b) The public employer shall recognize the employee association until recognition of the association is withdrawn, in accordance with Section 148.007, by a majority of the covered employees eligible to sign a petition for recognition.

Sec. 148.010. SELECTION OF BARGAINING AGENT; BARGAINING

1 UNIT. (a) The public employer's chief executive officer or the  
2 chief executive officer's designee shall select one or more persons  
3 to represent the public employer as its sole and exclusive  
4 bargaining agent to meet and confer on issues related to the wages,  
5 hours of employment, and other terms and conditions of employment  
6 of covered employees.

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

9 (c) A municipality's bargaining unit is composed of all the  
10 covered employees.

11 Sec. 148.011. PROTECTED RIGHTS OF EMPLOYEES. A meet and  
12 confer agreement ratified under this chapter may not interfere with  
13 the right of a covered employee to pursue allegations of  
14 discrimination based on race, creed, color, national origin,  
15 religion, age, sex, or disability with the Texas Workforce  
16 Commission civil rights division or the federal Equal Employment  
17 Opportunity Commission or to pursue affirmative action litigation.

18 Sec. 148.012. OPEN RECORDS. (a) A proposed meet and confer  
19 agreement and a document prepared and used by the municipality,  
20 including a public employer, in connection with the proposed  
21 agreement are available to the public under Chapter 552, Government  
22 Code, only after the agreement is ready to be ratified by the  
23 governing body of the municipality.

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

27 Sec. 148.013. OPEN DELIBERATIONS. (a) Deliberations



1 relating to a meet and confer agreement or proposed agreement under  
2 this chapter between representatives of the public employer and  
3 representatives of the employee association recognized under this  
4 chapter as the sole and exclusive bargaining agent for the covered  
5 employees must be open to the public and comply with state law.

6 (b) Subsection (a) may not be construed to prohibit the  
7 representatives of the public employer or the representatives of  
8 the recognized employee association from conducting private  
9 caucuses that are not open to the public during meet and confer  
10 negotiations.

11 Sec. 148.014. RATIFICATION AND ENFORCEABILITY OF  
12 AGREEMENT. (a) An agreement under this chapter is enforceable and  
13 binding on the public employer, the recognized employee  
14 association, and the employees covered by the meet and confer  
15 agreement only if:

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

18 (2) the recognized employee association ratified the  
19 agreement by conducting a secret ballot election at which the  
20 majority of the covered employees who voted in the election favored  
21 ratifying the agreement.

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

27 (c) A state district court of a judicial district in which

1 the municipality is located has jurisdiction to hear and resolve a  
2 dispute under the ratified meet and confer agreement on the  
3 application of a party to the agreement aggrieved by an action or  
4 omission of the other party when the action or omission is related  
5 to a right, duty, or obligation provided by the agreement. The  
6 court may issue proper restraining orders, temporary and permanent  
7 injunctions, or any other writ, order, or process, including  
8 contempt orders, that are appropriate to enforcing the agreement.

9 Sec. 148.015. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO  
10 OPERATE UNDER THIS CHAPTER. (a) The governing body of a  
11 municipality that granted recognition of an employee association  
12 under Section 148.004 without conducting an election under Section  
13 148.006 may withdraw recognition of the association by providing to  
14 the association not less than 90 days' written 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 an employee association after conducting an election  
21 under Section 148.006 may order an election to determine whether a  
22 public employer may continue to meet and confer under this chapter.  
23 The governing body may not order an election under this subsection  
24 until the second anniversary of the date of the election under  
25 Section 148.006.

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 permit voting for or against the proposition:  
6 "Authorizing \_\_\_\_\_ (name of the 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 employees 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 chapter only if a  
17 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 148.004 before the  
21 second anniversary of the date of the election.

22 Sec. 148.016. ELECTION TO REPEAL AGREEMENT. (a) Not later  
23 than the 45th day after the date a meet and confer agreement is  
24 ratified by the governing body of the municipality and the  
25 recognized employee association, a petition calling for the repeal  
26 of the agreement signed by at least 10 percent of the qualified  
27 voters residing in the municipality may be presented to the person

1 charged with ordering an election under Section 3.004, Election  
2 Code.

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

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

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

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

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

20 Sec. 148.017. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.  
21 A written meet and confer agreement ratified under this chapter  
22 preempts, during the term of the agreement and to the extent of any  
23 conflict, all contrary state statutes, local ordinances, executive  
24 orders, civil service provisions, or rules adopted by this state or  
25 a political subdivision or agent of this state, including a  
26 personnel board, civil service commission, or home-rule  
27 municipality, other than a statute, ordinance, executive order,

1 civil service provision, or rule regarding pensions or  
2 pension-related matters.

3 SECTION 2. This Act takes effect September 1, 2009.