

By: McClendon

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 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

1 majority of all covered employees.

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

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

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

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

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

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

17 Sec. 148.009. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) A  
18 public employer in a municipality that chooses to meet and confer  
19 under this chapter shall recognize an association that is  
20 recognized under Section 148.004 or 148.005 as the sole and  
21 exclusive bargaining agent for the covered employees.

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23 association until recognition of the association is withdrawn, in  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

26 Sec. 148.010. SELECTION OF BARGAINING AGENT; BARGAINING  
27 UNIT. (a) The public employer's chief executive officer or the

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

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

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

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

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

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

26 Sec. 148.013. OPEN DELIBERATIONS. (a) Deliberations  
27 relating to a meet and confer agreement or proposed agreement under

this chapter between representatives of the public employer and representatives of the employee association recognized under this chapter as the sole and exclusive bargaining agent for the covered employees must be open to the public and comply with state law.

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

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

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

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

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

(c) A state district court of a judicial district in which the municipality is located has jurisdiction to hear and resolve a

dispute under the ratified meet and confer agreement on the application of a party to the agreement aggrieved by an action or omission of the other party when the action or omission is related to a right, duty, or obligation provided by the agreement. The court may issue proper restraining orders, temporary and permanent injunctions, or any other writ, order, or process, including contempt orders, that are appropriate to enforcing the agreement.

Sec. 148.015. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO OPERATE UNDER THIS CHAPTER. (a) The governing body of a municipality that granted recognition of an employee association under Section 148.004 without conducting an election under Section 148.006 may withdraw recognition of the association by providing to the association not less than 90 days' written notice that:

(1) the governing body is withdrawing recognition of 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 an employee association after conducting an election under Section 148.006 may order an election to determine whether a public employer may continue to meet and confer under this chapter. The governing body may not order an election under this subsection until the second anniversary of the date of the election under Section 148.006.

(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

1 municipality orders the election and that allows sufficient time to  
2 prepare the ballot in compliance with other requirements of law.

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

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

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

17 (g) If an election ordered under Subsection (b) is held, an  
18 association may not submit a petition for recognition to the  
19 governing body of the municipality under Section 148.004 before the  
20 second anniversary of the date of the election.

21 Sec. 148.016. ELECTION TO REPEAL AGREEMENT. (a) Not later  
22 than the 45th day after the date a meet and confer agreement is  
23 ratified by the governing body of the municipality and the  
24 recognized employee association, a petition calling for the repeal  
25 of the agreement signed by at least 10 percent of the qualified  
26 voters residing in the municipality may be presented to the person  
27 charged with ordering an election under Section 3.004, Election

1 Code.

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

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

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

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

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

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

1 pension-related matters.

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