

1-1 By: West S.B. No. 1450
1-2 (In the Senate - Filed March 6, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Intergovernmental
1-4 Relations; April 6, 2009, reported favorably by the following
1-5 vote: Yeas 3, Nays 0; April 6, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the right of certain municipalities to maintain local
1-9 control over wages, hours, and other terms and conditions of
1-10 employment.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subtitle A, Title 5, Local Government Code, is
1-13 amended by adding Chapter 149 to read as follows:

1-14 CHAPTER 149. LOCAL CONTROL OF MUNICIPAL EMPLOYMENT MATTERS IN
1-15 CERTAIN MUNICIPALITIES

1-16 Sec. 149.001. APPLICABILITY. (a) This chapter applies
1-17 only to a municipality with a population of more than one million
1-18 that has not adopted Chapter 143 or 174.

1-19 (b) This chapter does not apply to:

1-20 (1) firefighters or police officers who are covered by
1-21 Subchapter B of Chapter 142, Subchapter H, I, or J of Chapter 143,
1-22 Chapter 147, or Chapter 174;

1-23 (2) an employee association in which employees
1-24 described by Subdivision (1) participate; or

1-25 (3) employees of a municipally owned utility or other
1-26 board or political subdivision whose wages, salaries, rates of pay,
1-27 hours, working conditions, or other terms and conditions of
1-28 employment are established and governed by an appointed board
1-29 independent from the municipal governing body.

1-30 Sec. 149.002. DEFINITIONS. In this chapter:

1-31 (1) "Covered employee" means an employee of a
1-32 municipality, other than a department head or managerial employee,
1-33 a firefighter or police officer who is covered by Subchapter B of
1-34 Chapter 142, Subchapter H, I, or J of Chapter 143, or Chapter 174,
1-35 or a peace officer covered by Chapter 142.

1-36 (2) "Employee association" means an organization in
1-37 which municipal employees participate, that exists for the purpose,
1-38 wholly or partly, of dealing with one or more employers, whether
1-39 public or private, concerning grievances, labor disputes, wages,
1-40 rates of pay, hours of employment, or conditions of work affecting
1-41 public employees, and whose members pay dues by means of an
1-42 automatic payroll deduction.

1-43 (3) "Managerial employee" means an employee who:

1-44 (A) is engaged primarily in executive and
1-45 management functions; and

1-46 (B) is charged with the responsibility of
1-47 developing, administering, or effecting management policies.

1-48 (4) "Public employer" means any municipality or
1-49 agency, board, commission, or political subdivision controlled by a
1-50 municipality that is required to establish the wages, salaries,
1-51 rates of pay, hours, working conditions, and other terms and
1-52 conditions of employment of public employees. The term may
1-53 include, under appropriate circumstances, a mayor, manager,
1-54 administrator of a municipality, municipal governing body,
1-55 director of personnel, personnel board, or one or more other
1-56 officials regardless of the name by which they are designated.

1-57 Sec. 149.003. GENERAL PROVISIONS RELATING TO AGREEMENTS AND
1-58 RECOGNITION. (a) A municipality may not be denied local control
1-59 over wages, salaries, rates of pay, hours of work, other terms and
1-60 conditions of employment, or other state-mandated personnel
1-61 issues. A public employer may enter into a mutual agreement
1-62 governing these issues with an employee association recognized
1-63 under this chapter as the sole and exclusive bargaining agent for
1-64 all covered employees that does not advocate the illegal right to

strike by covered 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. 149.004. 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 association a petition signed by the majority of all covered employees that requests recognition of the association as the sole and exclusive bargaining agent for all the covered employees, the governing body shall:

(1) grant recognition of the association as requested in the petition and find that a public employer may meet and confer under this chapter without conducting an election by the voters in the municipality under Section 149.006;

(2) defer granting recognition of the association and order an election by the voters in the municipality under Section 149.006 regarding whether a public employer may meet and confer under this chapter; or

(3) order a certification election under Section 149.005 to determine whether the association represents a majority of the covered employees.

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

(1) grant recognition of the association as requested in the petition for recognition and find that a public employer may meet and confer under this chapter without conducting an election by the voters in the municipality under Section 149.006; or

(2) defer granting recognition of the association and order an election by the voters in the municipality under Section 149.006 regarding whether a public employer may meet and confer under this chapter.

Sec. 149.005. CERTIFICATION ELECTION. (a) Except as provided by Subsection (b), a certification election ordered under Section 149.004(a)(3) to determine whether an employee association represents a majority of the covered employees shall be conducted according to procedures agreeable to the parties.

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

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

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

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

Sec. 149.006. ELECTION TO AUTHORIZE OPERATING UNDER THIS CHAPTER. (a) The governing body of a municipality that receives a petition for recognition under Section 149.004 may order an election to determine whether a public employer may meet and confer under this chapter.

(b) An election ordered under this section must be held as part of the next regularly scheduled general election for municipal

officials that is held after the date the governing body of the municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

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

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

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

(f) If an election authorized under this section is held, an employee association may not submit a petition for recognition to the governing body of the municipality under Section 149.004 before the second anniversary of the date of the election.

Sec. 149.007. CHANGE OR MODIFICATION OF RECOGNITION.

(a) The covered employees may modify or change the recognition of the employee association granted under this chapter by filing 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 change or modification as provided by the petition; or

(2) order a certification election in accordance with Section 149.005 regarding whether to do so.

Sec. 149.008. STRIKES PROHIBITED. (a) A covered employee may not engage in a strike or organized work stoppage against this state or the municipality.

(b) A covered 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. 149.009. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) A public employer in a municipality that chooses to meet and confer under this chapter shall recognize an employee association that is recognized under Section 149.004 or 149.005 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 149.007, by a majority of the covered employees eligible to sign a petition for recognition.

Sec. 149.010. SELECTION OF BARGAINING AGENT; BARGAINING UNIT. (a) The public employer's chief executive officer or the chief executive officer's designee shall select one or more persons to represent the public employer as its sole and exclusive bargaining agent to meet and confer on issues related to the wages, hours of employment, and other terms and conditions of employment of covered employees.

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

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

Sec. 149.011. PROTECTED RIGHTS OF EMPLOYEES. A meet and confer agreement ratified under this chapter may not interfere with the right of a member of a bargaining unit to pursue allegations of discrimination based on race, creed, color, national origin, religion, age, sex, or disability with the Texas Workforce Commission civil rights division or the federal Equal Employment Opportunity Commission or to pursue affirmative action litigation.

4-1 Sec. 149.012. OPEN RECORDS. (a) A proposed meet and
 4-2 confer agreement and a document prepared and used by the
 4-3 municipality, including a public employer, in connection with the
 4-4 proposed agreement are available to the public under Chapter 552,
 4-5 Government Code, only after the agreement is ready to be ratified by
 4-6 the governing body of the municipality.

4-7 (b) This section does not affect the application of
 4-8 Subchapter C, Chapter 552, Government Code, to a document prepared
 4-9 and used in connection with the agreement.

4-10 Sec. 149.013. OPEN DELIBERATIONS. (a) Deliberations
 4-11 relating to a meet and confer agreement or proposed agreement under
 4-12 this chapter between representatives of the public employer and
 4-13 representatives of the employee association recognized under this
 4-14 chapter as the sole and exclusive bargaining agent for the covered
 4-15 employees must be open to the public and comply with state law.

4-16 (b) Subsection (a) may not be construed to prohibit the
 4-17 representatives of the public employer or the representatives of
 4-18 the recognized employee association from conducting private
 4-19 caucuses that are not open to the public during meet and confer
 4-20 negotiations.

4-21 Sec. 149.014. RATIFICATION AND ENFORCEABILITY OF
 4-22 AGREEMENT. (a) An agreement under this chapter is enforceable and
 4-23 binding on the public employer, the recognized employee
 4-24 association, and the employees covered by the meet and confer
 4-25 agreement only if:

4-26 (1) the governing body of the municipality ratified
 4-27 the agreement by a majority vote; and

4-28 (2) the recognized employee association ratified the
 4-29 agreement by conducting a secret ballot election at which the
 4-30 majority of the covered employees who are members of the
 4-31 association favored ratifying the agreement.

4-32 (b) A meet and confer agreement ratified as described by
 4-33 Subsection (a) may establish a procedure by which the parties agree
 4-34 to resolve disputes related to a right, duty, or obligation
 4-35 provided by the agreement, including binding arbitration on a
 4-36 question involving interpretation of the agreement.

4-37 (c) A state district court of a judicial district in which
 4-38 the municipality is located has jurisdiction to hear and resolve a
 4-39 dispute under the ratified meet and confer agreement on the
 4-40 application of a party to the agreement aggrieved by an action or
 4-41 omission of the other party when the action or omission is related
 4-42 to a right, duty, or obligation provided by the agreement. The
 4-43 court may issue proper restraining orders, temporary and permanent
 4-44 injunctions, or any other writ, order, or process, including
 4-45 contempt orders, that are appropriate to enforcing the agreement.

4-46 Sec. 149.015. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
 4-47 OPERATE UNDER THIS CHAPTER. (a) The governing body of a
 4-48 municipality that granted recognition of an employee association
 4-49 under Section 149.004 without conducting an election under Section
 4-50 149.006 may withdraw recognition of the association by providing to
 4-51 the association not less than 90 days' written notice that:

4-52 (1) the governing body is withdrawing recognition of
 4-53 the association; and

4-54 (2) any agreement between the governing body and the
 4-55 association will not be renewed.

4-56 (b) The governing body of a municipality that granted
 4-57 recognition of an employee association after conducting an election
 4-58 under Section 149.006 may order an election to determine whether a
 4-59 public employer may continue to meet and confer under this chapter.
 4-60 The governing body may not order an election under this subsection
 4-61 until the second anniversary of the date of the election under
 4-62 Section 149.006.

4-63 (c) An election ordered under Subsection (b) must be held as
 4-64 part of the next regularly scheduled general election for municipal
 4-65 officers that occurs after the date the governing body of the
 4-66 municipality orders the election and that allows sufficient time to
 4-67 prepare the ballot in compliance with other requirements of law.

4-68 (d) The ballot for an election ordered under Subsection (b)
 4-69 shall be printed to allow voting for or against the proposition:

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

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

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

(g) If an election ordered under Subsection (b) is held, an employee association may not submit a petition for recognition to the governing body of the municipality under Section 149.004 before the second anniversary of the date of the election.

Sec. 149.016. ELECTION TO REPEAL AGREEMENT. (a) Not later than the 45th day after the date a meet and confer agreement is ratified by the governing body of the municipality and the recognized employee association, a petition calling for the repeal of the agreement signed by at least 10 percent of the qualified voters residing in the municipality may be presented to the person charged with ordering an election under Section 3.004, Election Code.

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

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

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

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

Sec. 149.017. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. A written meet and confer agreement ratified under this chapter preempts, during the term of the agreement and to the extent of any conflict, all contrary state statutes, local ordinances, executive orders, civil service provisions, or rules adopted by this state or a political subdivision or agent of this state, including a personnel board, civil service commission, or home-rule municipality, other than a statute, ordinance, executive order, civil service provision, or rule regarding pensions or pension-related matters.

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

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