

1-1 By: Uresti, Van de Putte, Zaffirini S.B. No. 2446
1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read
1-3 first time and referred to Committee on Intergovernmental
1-4 Relations; May 7, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 3, Nays 1;
1-6 May 7, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2446 By: Gallegos

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the right of certain municipalities to maintain local
1-11 control over wages, hours, and other terms and conditions of
1-12 employment.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subtitle A, Title 5, Local Government Code, is
1-15 amended by adding Chapter 148 to read as follows:

1-16 CHAPTER 148. LOCAL CONTROL OF MUNICIPAL EMPLOYMENT MATTERS IN
1-17 CERTAIN MUNICIPALITIES

1-18 Sec. 148.001. APPLICABILITY. (a) This chapter applies
1-19 only to a municipality with a population of more than one million
1-20 that:

1-21 (1) has adopted Chapter 174; and
1-22 (2) is not covered by Chapter 146 or 147.

1-23 (b) This chapter does not apply to:

1-24 (1) firefighters or police officers who are covered by
1-25 Subchapter B of Chapter 142, Subchapter H, I, or J of Chapter 143,
1-26 or Chapter 174;

1-27 (2) an employee association in which employees
1-28 described by Subdivision (1) participate; or

1-29 (3) employees of a municipally owned utility or other
1-30 board or political subdivision whose wages, salaries, rates of pay,
1-31 hours, working conditions, or other terms and conditions of
1-32 employment are established and governed by an appointed board
1-33 independent from the municipal governing body.

1-34 Sec. 148.002. DEFINITIONS. In this chapter:

1-35 (1) "Confidential employee" means an employee:

1-36 (A) who has access to confidential or
1-37 discretionary information regarding the formulation of the
1-38 municipality's policies or procedures;

1-39 (B) whose functional responsibilities or
1-40 knowledge concerning employee relations make the employee's
1-41 membership in an employee organization incompatible with the
1-42 employee's duties; or

1-43 (C) who is the executive secretary of the chief
1-44 administrator or executive officer of a municipal department.

1-45 (2) "Covered employee" means an employee of a
1-46 municipality, other than an employee who is not covered by the
1-47 classified municipal civil service, a confidential employee, a
1-48 firefighter or police officer who is covered by Subchapter H, I, or
1-49 J of Chapter 143 or by Chapter 174, or a peace officer covered by
1-50 Chapter 142.

1-51 (3) "Employee association" means an organization in
1-52 which municipal employees participate, that exists for the purpose,
1-53 wholly or partly, of dealing with one or more employers, whether
1-54 public or private, concerning grievances, labor disputes, wages,
1-55 rates of pay, hours of employment, or conditions of work affecting
1-56 covered employees, and whose members pay dues by means of an
1-57 automatic payroll deduction.

1-58 (4) "Public employer" means any municipality that is
1-59 required to establish the wages, salaries, rates of pay, hours,
1-60 working conditions, and other terms and conditions of employment of
1-61 public employees. The term may include, under appropriate
1-62 circumstances, a mayor, manager, administrator of a municipality,
1-63 municipal governing body, director of personnel, or personnel

2-1 board, or one or more other officials regardless of the name by
 2-2 which they are designated.

2-3 Sec. 148.003. GENERAL PROVISIONS RELATING TO AGREEMENTS AND
 2-4 RECOGNITION. (a) A municipality may not be denied local control
 2-5 over wages, salaries, rates of pay, hours of work, other terms and
 2-6 conditions of employment, or other state-mandated personnel
 2-7 issues. A public employer may enter into a mutual agreement
 2-8 governing these issues with an employee association recognized
 2-9 under this chapter as the sole and exclusive bargaining agent for
 2-10 all covered employees that does not advocate the illegal right to
 2-11 strike by municipal employees. The applicable statutes, local
 2-12 ordinances, and civil service rules govern a term or condition of
 2-13 employment on which the public employer and the association do not
 2-14 agree.

2-15 (b) An agreement under this chapter must be written.

2-16 (c) This chapter does not require the public employer and
 2-17 the recognized employee association to meet and confer on any issue
 2-18 or reach an agreement on any issue.

2-19 (d) This chapter does not authorize an agreement regarding
 2-20 pension or pension-related matters governed by statute.

2-21 Sec. 148.004. PETITION FOR RECOGNITION: ELECTION OR ACTION
 2-22 BY GOVERNING BODY. (a) Not later than the 30th day after the date
 2-23 the governing body of a municipality receives from an employee
 2-24 association a petition signed by the majority of all covered
 2-25 employees that requests recognition of the association as the sole
 2-26 and exclusive bargaining agent for all the covered employees, the
 2-27 governing body shall:

2-28 (1) grant recognition of the association as requested
 2-29 in the petition and find that a public employer may meet and confer
 2-30 under this chapter without conducting an election by the voters in
 2-31 the municipality under Section 148.006;

2-32 (2) defer granting recognition of the association and
 2-33 order an election by the voters in the municipality under Section
 2-34 148.006 regarding whether a public employer may meet and confer
 2-35 under this chapter; or

2-36 (3) order a certification election under Section
 2-37 148.005 to determine whether the association represents a majority
 2-38 of the covered employees.

2-39 (b) If the governing body of a municipality orders a
 2-40 certification election under Subsection (a)(3) and the employee
 2-41 association named in the petition is certified to represent a
 2-42 majority of the covered employees, the governing body shall, not
 2-43 later than the 30th day after the date that results of that election
 2-44 are certified:

2-45 (1) grant recognition of the association as requested
 2-46 in the petition for recognition and find that a public employer may
 2-47 meet and confer under this chapter without conducting an election
 2-48 by the voters in the municipality under Section 148.006; or

2-49 (2) defer granting recognition of the association and
 2-50 order an election by the voters in the municipality under Section
 2-51 148.006 regarding whether a public employer may meet and confer
 2-52 under this chapter.

2-53 Sec. 148.005. CERTIFICATION ELECTION. (a) Except as
 2-54 provided by Subsection (b), a certification election ordered under
 2-55 Section 148.004(a)(3) to determine whether an employee association
 2-56 represents a majority of the covered employees shall be conducted
 2-57 according to procedures agreeable to the parties.

2-58 (b) If the parties are unable to agree on procedures for the
 2-59 certification election, either party may request the American
 2-60 Arbitration Association to conduct the election and to certify the
 2-61 results of the election.

2-62 (c) The results of an election shall be certified if the
 2-63 employee association receives a majority of the valid votes cast in
 2-64 the election.

2-65 (d) Certification of the results of an election under this
 2-66 section resolves the question concerning representation.

2-67 (e) The employee association is liable for the expenses of
 2-68 the certification election, except that if two or more associations
 2-69 seeking recognition as the sole and exclusive bargaining agent

3-1 submit a petition signed by at least 30 percent of the employees
 3-2 eligible to sign the petition for recognition, all the associations
 3-3 named in any petition shall share equally the costs of the election.

3-4 Sec. 148.006. ELECTION TO AUTHORIZE OPERATING UNDER THIS
 3-5 CHAPTER. (a) The governing body of a municipality that receives a
 3-6 petition for recognition under Section 148.004 may order an
 3-7 election to determine whether a public employer may meet and confer
 3-8 under this chapter.

3-9 (b) An election ordered under this section must be held as
 3-10 part of the next regularly scheduled general election for municipal
 3-11 officials that is held after the date the governing body of the
 3-12 municipality orders the election and that allows sufficient time to
 3-13 prepare the ballot in compliance with other requirements of law.

3-14 (c) The ballot for an election ordered under this section
 3-15 shall be printed to permit voting for or against the proposition:
 3-16 "Authorizing _____ (name of the municipality) to operate under
 3-17 the state law allowing a municipality to meet and confer and make
 3-18 agreements with the association representing municipal employees
 3-19 as provided by state law, preserving the prohibition against
 3-20 strikes and organized work stoppages, and providing penalties for
 3-21 strikes and organized work stoppages."

3-22 (d) An election called under this section must be held and
 3-23 the returns prepared and canvassed in conformity with the Election
 3-24 Code.

3-25 (e) If an election authorized under this section is held,
 3-26 the municipality may operate under the other provisions of this
 3-27 chapter only if a majority of the votes cast at the election favor
 3-28 the proposition.

3-29 (f) If an election authorized under this section is held, an
 3-30 employee association may not submit a petition for recognition to
 3-31 the governing body of the municipality under Section 148.004 before
 3-32 the second anniversary of the date of the election.

3-33 Sec. 148.007. CHANGE OR MODIFICATION OF RECOGNITION.
 3-34 (a) Covered employees may modify, change, or withdraw the
 3-35 recognition of the employee association granted under this chapter
 3-36 by filing with the governing body of the municipality a petition
 3-37 signed by a majority of all covered employees.

3-38 (b) The governing body of the municipality may:

3-39 (1) recognize the modification, change, or withdrawal
 3-40 as provided by the petition; or

3-41 (2) order a certification election in accordance with
 3-42 Section 148.005 regarding whether to do so.

3-43 Sec. 148.008. STRIKES PROHIBITED. (a) A municipal
 3-44 employee may not engage in a strike or organized work stoppage
 3-45 against this state or the municipality.

3-46 (b) A municipal employee who participates in a strike
 3-47 forfeits any civil service rights, reemployment rights, and other
 3-48 rights, benefits, or privileges the employee may have as a result of
 3-49 the employee's employment or prior employment with the
 3-50 municipality.

3-51 (c) This section does not affect the right of a person to
 3-52 cease work if the person is not acting in concert with others in an
 3-53 organized work stoppage.

3-54 Sec. 148.009. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) A
 3-55 public employer in a municipality that chooses to meet and confer
 3-56 under this chapter shall recognize an association that is
 3-57 recognized under Section 148.004 or 148.005 as the sole and
 3-58 exclusive bargaining agent for the covered employees.

3-59 (b) The public employer shall recognize the employee
 3-60 association until recognition of the association is withdrawn, in
 3-61 accordance with Section 148.007, by a majority of the covered
 3-62 employees eligible to sign a petition for recognition.

3-63 Sec. 148.010. SELECTION OF BARGAINING AGENT; BARGAINING
 3-64 UNIT. (a) The public employer's chief executive officer or the
 3-65 chief executive officer's designee shall select one or more persons
 3-66 to represent the public employer as its sole and exclusive
 3-67 bargaining agent to meet and confer on issues related to the wages,
 3-68 hours of employment, and other terms and conditions of employment
 3-69 of covered employees.

4-1 (b) An employee association may designate one or more
 4-2 persons to negotiate or bargain on the association's behalf.

4-3 (c) A municipality's bargaining unit is composed of all the
 4-4 covered employees.

4-5 Sec. 148.011. PROTECTED RIGHTS OF EMPLOYEES. A meet and
 4-6 confer agreement ratified under this chapter may not interfere with
 4-7 the right of a covered employee to pursue allegations of
 4-8 discrimination based on race, creed, color, national origin,
 4-9 religion, age, sex, or disability with the Texas Workforce
 4-10 Commission civil rights division or the federal Equal Employment
 4-11 Opportunity Commission or to pursue affirmative action litigation.

4-12 Sec. 148.012. OPEN RECORDS. (a) A proposed meet and
 4-13 confer agreement and a document prepared and used by the
 4-14 municipality, including a public employer, in connection with the
 4-15 proposed agreement are available to the public under Chapter 552,
 4-16 Government Code, only after the agreement is ready to be ratified by
 4-17 the governing body of the municipality.

4-18 (b) This section does not affect the application of
 4-19 Subchapter C, Chapter 552, Government Code, to a document prepared
 4-20 and used in connection with the agreement.

4-21 Sec. 148.013. OPEN DELIBERATIONS. (a) Deliberations
 4-22 relating to a meet and confer agreement or proposed agreement under
 4-23 this chapter between representatives of the public employer and
 4-24 representatives of the employee association recognized under this
 4-25 chapter as the sole and exclusive bargaining agent for the covered
 4-26 employees must be open to the public and comply with state law.

4-27 (b) Subsection (a) may not be construed to prohibit the
 4-28 representatives of the public employer or the representatives of
 4-29 the recognized employee association from conducting private
 4-30 caucuses that are not open to the public during meet and confer
 4-31 negotiations.

4-32 Sec. 148.014. RATIFICATION AND ENFORCEABILITY OF
 4-33 AGREEMENT. (a) An agreement under this chapter is enforceable and
 4-34 binding on the public employer, the recognized employee
 4-35 association, and the employees covered by the meet and confer
 4-36 agreement only if:

4-37 (1) the governing body of the municipality ratified
 4-38 the agreement by a majority vote; and

4-39 (2) the recognized employee association ratified the
 4-40 agreement by conducting a secret ballot election at which the
 4-41 majority of the covered employees who voted in the election favored
 4-42 ratifying the agreement.

4-43 (b) A meet and confer agreement ratified as described by
 4-44 Subsection (a) may establish a procedure by which the parties agree
 4-45 to resolve disputes related to a right, duty, or obligation
 4-46 provided by the agreement, including binding arbitration on a
 4-47 question involving interpretation of the agreement.

4-48 (c) A state district court of a judicial district in which
 4-49 the municipality is located has jurisdiction to hear and resolve a
 4-50 dispute under the ratified meet and confer agreement on the
 4-51 application of a party to the agreement aggrieved by an action or
 4-52 omission of the other party when the action or omission is related
 4-53 to a right, duty, or obligation provided by the agreement. The
 4-54 court may issue proper restraining orders, temporary and permanent
 4-55 injunctions, or any other writ, order, or process, including
 4-56 contempt orders, that are appropriate to enforcing the agreement.

4-57 Sec. 148.015. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
 4-58 OPERATE UNDER THIS CHAPTER. (a) The governing body of a
 4-59 municipality that granted recognition of an employee association
 4-60 under Section 148.004 without conducting an election under Section
 4-61 148.006 may withdraw recognition of the association by providing to
 4-62 the association not less than 90 days' written notice that:

4-63 (1) the governing body is withdrawing recognition of
 4-64 the association; and

4-65 (2) any agreement between the governing body and the
 4-66 association will not be renewed.

4-67 (b) The governing body of a municipality that granted
 4-68 recognition of an employee association after conducting an election
 4-69 under Section 148.006 may order an election to determine whether a

5-1 public employer may continue to meet and confer under this chapter.
5-2 The governing body may not order an election under this subsection
5-3 until the second anniversary of the date of the election under
5-4 Section 148.006.

5-5 (c) An election ordered under Subsection (b) must be held as
5-6 part of the next regularly scheduled general election for municipal
5-7 officers that occurs after the date the governing body of the
5-8 municipality orders the election and that allows sufficient time to
5-9 prepare the ballot in compliance with other requirements of law.

5-10 (d) The ballot for an election ordered under Subsection (b)
5-11 shall be printed to permit voting for or against the proposition:
5-12 "Authorizing _____ (name of the municipality) to continue to
5-13 operate under the state law allowing a municipality to meet and
5-14 confer and make agreements with the association representing
5-15 municipal employees as provided by state law, preserving the
5-16 prohibition against strikes and organized work stoppages, and
5-17 providing penalties for strikes and organized work stoppages."

5-18 (e) An election ordered under Subsection (b) must be held
5-19 and the returns prepared and canvassed in conformity with the
5-20 Election Code.

5-21 (f) If an election ordered under Subsection (b) is held, the
5-22 municipality may continue to operate under this chapter only if a
5-23 majority of the votes cast at the election favor the proposition.

5-24 (g) If an election ordered under Subsection (b) is held, an
5-25 employee association may not submit a petition for recognition to
5-26 the governing body of the municipality under Section 148.004 before
5-27 the second anniversary of the date of the election.

5-28 Sec. 148.016. ELECTION TO REPEAL AGREEMENT. (a) Not later
5-29 than the 45th day after the date a meet and confer agreement is
5-30 ratified by the governing body of the municipality and the
5-31 recognized employee association, a petition calling for the repeal
5-32 of the agreement signed by at least 10 percent of the qualified
5-33 voters residing in the municipality may be presented to the person
5-34 charged with ordering an election under Section 3.004, Election
5-35 Code.

5-36 (b) If a petition is presented under Subsection (a), the
5-37 governing body of the municipality shall:

- 5-38 (1) repeal the meet and confer agreement; or
- 5-39 (2) certify that it is not repealing the agreement and
5-40 call an election to determine whether to repeal the agreement.

5-41 (c) An election called under Subsection (b)(2) may be held
5-42 as part of the next regularly scheduled general election for the
5-43 municipality or at a special election called by the governing body
5-44 for that purpose. The ballot shall be printed to permit voting for
5-45 or against the proposition: "Repeal the meet and confer agreement
5-46 ratified on _____ (date agreement was ratified) by the _____
5-47 (name of the governing body of the municipality) and the _____ (name
5-48 of the recognized municipal employee association) concerning
5-49 wages, salaries, rates of pay, hours of work, and other terms of
5-50 employment."

5-51 (d) If a majority of the votes cast at the election favor the
5-52 repeal of the agreement, the agreement is void.

5-53 Sec. 148.017. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.
5-54 A written meet and confer agreement ratified under this chapter
5-55 preempts, during the term of the agreement and to the extent of any
5-56 conflict, all contrary state statutes, local ordinances, executive
5-57 orders, civil service provisions, or rules adopted by this state or
5-58 a political subdivision or agent of this state, including a
5-59 personnel board, civil service commission, or home-rule
5-60 municipality, other than a statute, ordinance, executive order,
5-61 civil service provision, or rule regarding pensions or
5-62 pension-related matters.

5-63 SECTION 2. This Act takes effect September 1, 2009.

5-64 * * * * *