

By: Whitmire

S.B. No. 1268

A BILL TO BE ENTITLED

AN ACT

relating to the right of sheriff's departments in certain counties 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. Chapter 158, Local Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. LOCAL CONTROL OVER SHERIFF'S DEPARTMENT

EMPLOYMENT MATTERS IN CERTAIN COUNTIES

Sec. 158.101. APPLICABILITY. This subchapter applies only to a county with a population of more than four million.

Sec. 158.102. DEFINITIONS. In this subchapter:

(1) "Covered employee" means an employee of a county sheriff's department, other than an elected sheriff or other employee who is exempt under Section 158.013 or 158.038.

(2) "Employee association" means an organization in which county employees pay dues to participate and 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.

(3) "Public employer" means any county sheriff's department that is required to establish the wages, salaries, rates of pay, hours, working conditions, and other terms and conditions

1 of employment of employees of the sheriff's department. The term
2 may include, under appropriate circumstances, a county judge,
3 county commissioner, sheriff, commissioners court, director of
4 personnel, personnel board, or one or more other officials
5 regardless of the name by which they are designated.

6 Sec. 158.103. GENERAL PROVISIONS RELATING TO AGREEMENTS AND
7 RECOGNITION. (a) A public employer may not be denied local control
8 over wages, salaries, rates of pay, hours of work, other terms and
9 conditions of employment, or other state-mandated personnel
10 issues. A public employer may enter into a mutual agreement
11 governing these issues with an employee association recognized
12 under this subchapter as the sole and exclusive bargaining agent
13 for all covered employees that does not advocate the illegal right
14 to strike by county employees. The applicable statutes, local
15 ordinances, and civil service rules govern a term or condition of
16 employment on which the public employer and the association do not
17 agree.

18 (b) An agreement under this subchapter must be written.

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

22 Sec. 158.104. PETITION FOR RECOGNITION: ELECTION OR ACTION
23 BY COMMISSIONERS COURT. (a) Not later than the 30th day after the
24 date the commissioners court of a county receives from an employee
25 association a petition signed by the majority of all covered
26 employees that requests recognition of the association as the sole
27 and exclusive bargaining agent for all the covered employees, the

1 commissioners court shall:

2 (1) grant recognition of the association as requested
3 in the petition and find that a public employer may meet and confer
4 under this subchapter without conducting an election by the voters
5 in the county under Section 158.106;

6 (2) defer granting recognition of the association and
7 order an election by the voters in the county under Section 158.106
8 regarding whether a public employer may meet and confer under this
9 subchapter; or

10 (3) order a certification election under Section
11 158.105 to determine whether the association represents a majority
12 of the covered employees.

13 (b) If the commissioners court of a county orders a
14 certification election under Subsection (a)(3) and the employee
15 association named in the petition is certified to represent a
16 majority of the covered employees, the commissioners court shall,
17 not later than the 30th day after the date that results of that
18 election are certified:

19 (1) grant recognition of the association as requested
20 in the petition for recognition and find that a public employer may
21 meet and confer under this subchapter without conducting an
22 election by the voters in the county under Section 158.106; or

23 (2) defer granting recognition of the association and
24 order an election by the voters in the county under Section 158.106
25 regarding whether a public employer may meet and confer under this
26 subchapter.

27 Sec. 158.105. CERTIFICATION ELECTION. (a) Except as

1 provided by Subsection (b), a certification election ordered under
2 Section 158.104(a)(3) to determine whether an employee association
3 represents a majority of the covered employees shall be conducted
4 according to procedures agreeable to the parties.

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

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

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

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

20 Sec. 158.106. ELECTION TO AUTHORIZE OPERATING UNDER THIS
21 SUBCHAPTER. (a) A commissioners court that receives a petition for
22 recognition under Section 158.104 may order an election to
23 determine whether a public employer may meet and confer under this
24 subchapter.

25 (b) An election ordered under this section must be held as
26 part of the next regularly scheduled general election for county
27 officials that is held after the date the commissioners court

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

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

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

14 (e) If an election authorized under this section is held,
15 the county may operate under the other provisions of this
16 subchapter only if a majority of the votes cast at the election
17 favor the proposition.

18 (f) If an election authorized under this section is held, an
19 employee association may not submit a petition for recognition to
20 the commissioners court under Section 158.104 before the second
21 anniversary of the date of the election.

22 Sec. 158.107. CHANGE OR MODIFICATION OF RECOGNITION. (a)
23 Covered employees may modify, change, or withdraw the recognition
24 of the employee association granted under this subchapter by filing
25 with the commissioners court a petition signed by a majority of all
26 covered employees.

27 (b) The commissioners court may:

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

3 (2) order a certification election in accordance with
4 Section 158.105 regarding whether to do so.

5 Sec. 158.108. STRIKES PROHIBITED. (a) A covered employee
6 may not engage in a strike or organized work stoppage against this
7 state or the county.

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

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

15 Sec. 158.109. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) A
16 public employer in a county that chooses to meet and confer under
17 this subchapter shall recognize an association that is recognized
18 under Section 158.104 or 158.105 as the sole and exclusive
19 bargaining agent for the covered employees.

20 (b) The public employer shall recognize the employee
21 association until recognition of the association is withdrawn, in
22 accordance with Section 158.107, by a majority of the covered
23 employees eligible to sign a petition for recognition.

24 Sec. 158.110. SELECTION OF BARGAINING AGENT; BARGAINING
25 UNIT. (a) The public employer's chief executive officer or the
26 chief executive officer's designee shall select one or more persons
27 to represent the public employer as its sole and exclusive

1 bargaining agent to meet and confer on issues related to the wages,
2 hours of employment, and other terms and conditions of employment
3 of covered employees.

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

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

8 Sec. 158.111. PROTECTED RIGHTS OF EMPLOYEES. A meet and
9 confer agreement ratified under this subchapter may not interfere
10 with the right of a covered employee to pursue allegations of
11 discrimination based on race, creed, color, national origin,
12 religion, age, sex, or disability with the Texas Workforce
13 Commission civil rights division or the federal Equal Employment
14 Opportunity Commission or to pursue affirmative action litigation.

15 Sec. 158.112. OPEN RECORDS. (a) A proposed meet and confer
16 agreement and a document prepared and used by the county, including
17 a public employer, in connection with the proposed agreement are
18 available to the public under Chapter 552, Government Code, only
19 after the agreement is ready to be ratified by the commissioners
20 court of the county.

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

24 Sec. 158.113. OPEN DELIBERATIONS. (a) Deliberations
25 relating to a meet and confer agreement or proposed agreement under
26 this subchapter between representatives of the public employer and
27 representatives of the employee association recognized under this

1 subchapter as the sole and exclusive bargaining agent for the
2 covered employees must be open to the public and comply with state
3 law.

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

9 Sec. 158.114. RATIFICATION AND ENFORCEABILITY OF
10 AGREEMENT. (a) An agreement under this subchapter is enforceable
11 and binding on the public employer, the recognized employee
12 association, and the employees covered by the meet and confer
13 agreement only if:

14 (1) the commissioners court ratified the agreement by
15 a majority vote; and

16 (2) the recognized employee association ratified the
17 agreement by conducting a secret ballot election at which the
18 majority of the members of the employee association who voted in the
19 election favored ratifying the agreement.

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

25 (c) A state district court of a judicial district in which
26 the county is located has jurisdiction to hear and resolve a dispute
27 under the ratified meet and confer agreement on the application of a

1 party to the agreement aggrieved by an action or omission of the
2 other party when the action or omission is related to a right, duty,
3 or obligation provided by the agreement. The court may issue proper
4 restraining orders, temporary and permanent injunctions, or any
5 other writ, order, or process, including contempt orders, that are
6 appropriate to enforcing the agreement.

7 Sec. 158.115. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
8 OPERATE UNDER THIS SUBCHAPTER. (a) The commissioners court of a
9 county that granted recognition of an employee association under
10 Section 158.104 without conducting an election under Section
11 158.106 may withdraw recognition of the association by providing to
12 the association not less than 90 days' written notice that:

13 (1) the commissioners court is withdrawing
14 recognition of the association; and

15 (2) any agreement between the commissioners court and
16 the association will not be renewed.

17 (b) The commissioners court that granted recognition of an
18 employee association after conducting an election under Section
19 158.106 may order an election to determine whether a public
20 employer may continue to meet and confer under this subchapter. The
21 commissioners court may not order an election under this subsection
22 until the second anniversary of the date of the election under
23 Section 158.106.

24 (c) An election ordered under Subsection (b) must be held as
25 part of the next regularly scheduled general election for county
26 officers that occurs after the date the commissioners court orders
27 the election and that allows sufficient time to prepare the ballot

1 in compliance with other requirements of law.

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

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

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

16 (g) If an election ordered under Subsection (b) is held, an
17 employee association may not submit a petition for recognition to
18 the commissioners court under Section 158.104 before the second
19 anniversary of the date of the election.

20 Sec. 158.116. ELECTION TO REPEAL AGREEMENT. (a) Not later
21 than the 45th day after the date a meet and confer agreement is
22 ratified by the commissioners court and the recognized employee
23 association, a petition calling for the repeal of the agreement
24 signed by at least 10 percent of the qualified voters residing in
25 the county may be presented to the person charged with ordering an
26 election under Section 3.004, Election Code.

27 (b) If a petition is presented under Subsection (a), the

1 commissioners court shall:

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

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

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

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

17 Sec. 158.117. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.
18 A written meet and confer agreement ratified under this subchapter
19 preempts, during the term of the agreement and to the extent of any
20 conflict, all contrary state statutes, local ordinances, executive
21 orders, civil service provisions, or rules adopted by this state or
22 a political subdivision or agent of this state, including a
23 personnel board or civil service commission, other than a statute,
24 ordinance, executive order, civil service provision, or rule
25 regarding pensions or pension-related matters.

26 SECTION 2. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

S.B. No. 1268

1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2011.