

By: Watson

S.B. No. 1284

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 THAT OPERATE UNDER CITY MANAGER FORM OF GOVERNMENT

Sec. 148.001. APPLICABILITY. (a) This chapter applies only to a municipality with a population of 750,000 or more:

(1) that operates under a city manager form of government; and

(2) in which all members of the municipality's governing body are elected at large.

(b) This chapter does not apply to:

(1) firefighters or police officers who are covered by Subchapter I, Chapter 143;

(2) emergency medical services personnel; or

(3) an employee association in which employees described by Subdivisions (1) and (2) participate.

(c) A municipality that was subject to this chapter by application of Subsection (a) and that subsequently changes its

1 governing body or form of government continues to be subject to this
2 chapter, regardless of whether the municipality continues to meet
3 the requirements of that subsection.

4 Sec. 148.002. DEFINITIONS. In this chapter:

5 (1) "Appointed employee" means any municipal employee
6 appointed by the municipality's governing body.

7 (2) "Covered employee" means an employee of a
8 municipality, other than:

9 (A) an appointed employee;

10 (B) a city manager, an assistant city manager, or
11 a professional executive assistant to a city manager or assistant
12 city manager;

13 (C) an employee who holds an executive-level
14 position;

15 (D) a cadet or trainee enrolled in a training
16 program for police officers, firefighters, or emergency medical
17 services personnel;

18 (E) an employee designated under Section 148.010
19 as a bargaining agent for the municipality; and

20 (F) an employee designated as exempt from the
21 bargaining unit by the mutual agreement of the recognized employee
22 association and the public employer.

23 (3) "Emergency medical services personnel" has the
24 meaning assigned by Section 142.152(2).

25 (4) "Employee association" means an organization in
26 which municipal employees participate and that exists for the
27 purpose, wholly or partly, of dealing with one or more employers,

1 whether public or private, concerning grievances, labor disputes,
2 wages, rates of pay, hours of employment, or conditions of work
3 affecting public employees and whose members pay dues by means of an
4 automatic payroll deduction.

5 (5) "Public employer" means any municipality or
6 agency, board, commission, or political subdivision controlled by a
7 municipality that is required to establish the wages, salaries,
8 rates of pay, hours, working conditions, and other terms and
9 conditions of employment of public employees. The term may
10 include, under appropriate circumstances, a mayor, manager,
11 administrator of a municipality, municipal governing body,
12 director of personnel, personnel board, or one or more other
13 officials regardless of the name by which they are designated.

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

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

27 (c) This chapter does not require the public employer and

1 the recognized employee association to meet and confer or reach an
2 agreement on any issue.

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

5 Sec. 148.004. PETITION FOR RECOGNITION: ELECTION OR ACTION
6 BY GOVERNING BODY. (a) Not later than the 30th day after the date
7 the governing body of a municipality receives from an employee
8 association a petition signed by the majority of all covered
9 employees that requests recognition of the association as the sole
10 and exclusive bargaining agent for all the covered employees, the
11 governing body shall:

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

16 (2) defer granting recognition of the association and
17 order an election by the voters in the municipality under Section
18 148.006 regarding whether a public employer may meet and confer
19 under this chapter; or

20 (3) order a certification election under Section
21 148.005 to determine whether the association represents a majority
22 of the covered employees.

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

1 certified:

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

6 (2) defer granting recognition of the association and
7 order an election by the voters in the municipality under Section
8 148.006 regarding whether a public employer may meet and confer
9 under this chapter.

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

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

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

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

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

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

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

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

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

26 (f) If an election authorized under this section is held, an
27 employee association may not submit a petition for recognition to

1 the governing body of the municipality under Section 148.004 before
2 the second anniversary of the date of the election.

3 Sec. 148.007. CHANGE OR MODIFICATION OF RECOGNITION. (a)
4 The municipal employees may modify or change the recognition of the
5 employee association granted under this chapter by filing with the
6 governing body of the municipality a petition signed by a majority
7 of all covered employees.

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

9 (1) recognize the change or modification as provided
10 by the petition; or

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

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

16 (b) A municipal employee who participates in a strike
17 forfeits any civil service rights, reemployment rights, and other
18 rights, benefits, or privileges the employee may have as a result of
19 the employee's employment or prior employment with the
20 municipality.

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

24 Sec. 148.009. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) A
25 public employer in a municipality that chooses to meet and confer
26 under this chapter shall recognize an employee association that is
27 recognized under Section 148.004 or 148.005 as the sole and

1 exclusive bargaining agent for the covered employees.

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

6 Sec. 148.010. SELECTION OF BARGAINING AGENT; BARGAINING
7 UNIT. (a) The public employer's chief executive officer or the
8 chief executive officer's designee shall select one or more persons
9 to represent the public employer as its sole and exclusive
10 bargaining agent to meet and confer on issues related to the wages,
11 hours of employment, and other terms and conditions of employment
12 of municipal employees.

13 (b) An employee association may designate one or more
14 persons to negotiate or bargain on the association's behalf. An
15 employee association may not designate as one of its bargaining
16 agents any person employed as an attorney for the public employer.

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

19 Sec. 148.011. PROTECTED RIGHTS OF EMPLOYEES. A meet and
20 confer agreement ratified under this chapter may not interfere with
21 the right of a member of a bargaining unit to pursue allegations of
22 discrimination based on race, creed, color, national origin,
23 religion, age, sex, or disability with the Texas Workforce
24 Commission civil rights division or the United States Equal
25 Employment Opportunity Commission or to pursue affirmative action
26 litigation.

27 Sec. 148.012. OPEN RECORDS. (a) A proposed meet and confer

1 agreement and a document prepared and used by the municipality,
2 including a public employer, in connection with the proposed
3 agreement are available to the public under Chapter 552, Government
4 Code, only after the agreement is ready to be ratified by the
5 governing body of the municipality.

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

9 Sec. 148.013. OPEN DELIBERATIONS. (a) Deliberations
10 relating to a meet and confer agreement or proposed agreement under
11 this chapter between representatives of the public employer and
12 representatives of the employee association recognized under this
13 chapter as the sole and exclusive bargaining agent for the covered
14 employees must be open to the public and comply with state law.

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

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

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

27 (2) the recognized employee association ratified the

1 agreement by conducting a secret ballot election at which the
2 majority of the covered employees who voted in the election and are
3 members of the association favored ratifying the agreement.

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

9 (c) A state district court of a judicial district in which
10 the municipality is located has jurisdiction to hear and resolve a
11 dispute under the ratified meet and confer agreement on the
12 application of a party to the agreement aggrieved by an action or
13 omission of the other party when the action or omission is related
14 to a right, duty, or obligation provided by the agreement. The
15 court may issue proper restraining orders, temporary and permanent
16 injunctions, or any other writ, order, or process, including
17 contempt orders, that are appropriate to enforcing the agreement.

18 Sec. 148.015. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
19 OPERATE UNDER THIS CHAPTER. (a) The governing body of a
20 municipality that granted recognition of an employee association
21 under Section 148.004 without conducting an election under Section
22 148.006 may withdraw recognition of the association by providing to
23 the association not less than 90 days' written notice that:

24 (1) the governing body is withdrawing recognition of
25 the association; and

26 (2) any agreement between the governing body and the
27 association will not be renewed.

1 (b) The governing body of a municipality that granted
2 recognition of an employee association after conducting an election
3 under Section 148.006 may order an election to determine whether a
4 public employer may continue to meet and confer under this chapter.
5 The governing body may not order an election under this subsection
6 until the second anniversary of the date of the election under
7 Section 148.006.

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

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

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

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

27 (g) If an election ordered under Subsection (b) is held, an

1 employee association may not submit a petition for recognition to
2 the governing body of the municipality under Section 148.004 before
3 the second anniversary of the date of the election.

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

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

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

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

27 (d) If a majority of the votes cast at the election favor the

1 repeal of the agreement, the agreement is void.

2 Sec. 148.017. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.

3 A written meet and confer agreement ratified under this chapter
4 preempts, during the term of the agreement and to the extent of any
5 conflict, all contrary state statutes, local ordinances, executive
6 orders, civil service provisions, or rules adopted by this state or
7 a political subdivision or agent of this state, including a
8 personnel board, civil service commission, or home-rule
9 municipality, other than a statute, ordinance, executive order,
10 civil service provision, or rule regarding pensions or
11 pension-related matters.

12 Sec. 148.018. ARBITRATION. The governing body of a

13 municipality may submit to interest arbitration any issues that
14 were the subject of negotiation between the municipality and the
15 employee association. An award or decision by an arbitrator is not
16 binding on the municipality until it is adopted by the
17 municipality's governing body.

18 SECTION 2. This Act takes effect September 1, 2011.