

By: Dukes

H.B. No. 2033

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 750,000 or more that is primarily located in a county with a population of 1.5 million or less.

(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.

Sec. 148.002. DEFINITIONS. In this chapter:

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

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

1                   (A) an appointed employee;

2                   (B) a city manager, an assistant city manager, or  
3 a professional executive assistant to a city manager or assistant  
4 city manager;

5                   (C) an employee who holds an executive-level  
6 position;

7                   (D) a cadet or trainee enrolled in a training  
8 program for police officers, firefighters, or emergency medical  
9 services personnel;

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

12                   (F) an employee designated as exempt from the  
13 bargaining unit by the mutual agreement of the recognized employee  
14 association and the public employer.

15                   (3) "Emergency medical services personnel" has the  
16 meaning assigned by Section [142.152](#)(2).

17                   (4) "Employee association" means an organization in  
18 which municipal employees participate and that exists for the  
19 purpose, wholly or partly, of dealing with one or more employers,  
20 whether public or private, concerning grievances, labor disputes,  
21 wages, rates of pay, hours of employment, or conditions of work  
22 affecting public employees and whose members pay dues by means of an  
23 automatic payroll deduction.

24                   (5) "Public employer" means any municipality or  
25 agency, board, commission, or political subdivision controlled by a  
26 municipality that is required to establish the wages, salaries,  
27 rates of pay, hours, working conditions, and other terms and

1 conditions of employment of public employees. The term may  
2 include, under appropriate circumstances, a mayor, manager,  
3 administrator of a municipality, municipal governing body,  
4 director of personnel, personnel board, or one or more other  
5 officials regardless of the name by which they are designated.

6 Sec. 148.003. GENERAL PROVISIONS RELATING TO AGREEMENTS AND  
7 RECOGNITION. (a) A municipality 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 chapter as the sole and exclusive bargaining agent for  
13 all covered employees that does not advocate the illegal right to  
14 strike by municipal 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 chapter must be written.

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

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

24 Sec. 148.004. PETITION FOR RECOGNITION: ELECTION OR ACTION  
25 BY GOVERNING BODY. (a) Not later than the 30th day after the date  
26 the governing body of a municipality receives from an employee  
27 association a petition signed by the majority of all covered

1 employees that requests recognition of the association as the sole  
2 and exclusive bargaining agent for all the covered employees, the  
3 governing body shall:

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

8 (2) defer granting recognition of the association and  
9 order an election by the voters in the municipality under Section  
10 148.006 regarding whether a public employer may meet and confer  
11 under this chapter; or

12 (3) order a certification election under Section  
13 148.005 to determine whether the association represents a majority  
14 of the covered employees.

15 (b) If the governing body of a municipality orders a  
16 certification election under Subsection (a)(3) and the employee  
17 association named in the petition is certified to represent a  
18 majority of the covered employees, the governing body shall, not  
19 later than the 30th day after the date results of that election are  
20 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 valid votes cast in the  
13 election.

14 (d) 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. 148.006. ELECTION TO AUTHORIZE OPERATING UNDER THIS  
21 CHAPTER. (a) The governing body of a municipality that receives a  
22 petition for recognition under Section 148.004 may order an  
23 election to determine whether a public employer may meet and confer  
24 under this chapter.

25 (b) An election ordered under this section must be held as  
26 part of the next regularly scheduled general election for municipal  
27 officials that is held 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 (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 municipality) to operate under  
6 the state law allowing a municipality to meet and confer and make  
7 agreements with the association representing municipal employees  
8 as provided by state law, preserving the prohibition against  
9 strikes and organized work stoppages, and providing penalties for  
10 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 municipality may operate under the other provisions of this  
16 chapter only if a majority of the votes cast at the election favor  
17 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 governing body of the municipality under Section 148.004 before  
21 the second anniversary of the date of the election.

22 Sec. 148.007. CHANGE OR MODIFICATION OF RECOGNITION. (a)  
23 The municipal employees may modify or change the recognition of the  
24 employee association granted under this chapter by filing with the  
25 governing body of the municipality a petition signed by a majority  
26 of all covered employees.

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

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

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

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

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

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

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

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

25           Sec. 148.010. SELECTION OF BARGAINING AGENT; BARGAINING  
26 UNIT. (a) The public employer's chief executive officer or the  
27 chief executive officer's designee shall select one or more persons

1 to represent the public employer as its sole and exclusive  
2 bargaining agent to meet and confer on issues related to the wages,  
3 hours of employment, and other terms and conditions of employment  
4 of municipal employees.

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

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

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

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

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



1       Sec. 148.013. OPEN DELIBERATIONS. (a) Deliberations  
2 relating to a meet and confer agreement or proposed agreement under  
3 this chapter between representatives of the public employer and  
4 representatives of the employee association recognized under this  
5 chapter as the sole and exclusive bargaining agent for the covered  
6 employees must be open to the public and comply with state law.

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

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

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

19               (2) the recognized employee association ratified the  
20 agreement by conducting a secret ballot election at which the  
21 majority of the covered employees who voted in the election and are  
22 members of the association favored ratifying the agreement.

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

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

10       Sec. 148.015. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO  
11 OPERATE UNDER THIS CHAPTER. (a) The governing body of a  
12 municipality that granted recognition of an employee association  
13 under Section 148.004 without conducting an election under Section  
14 148.006 may withdraw recognition of the association by providing to  
15 the association not less than 90 days' written notice that:

16               (1) the governing body is withdrawing recognition of  
17 the association; and

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

20       (b) The governing body of a municipality that granted  
21 recognition of an employee association after conducting an election  
22 under Section 148.006 may order an election to determine whether a  
23 public employer may continue to meet and confer under this chapter.  
24 The governing body may not order an election under this subsection  
25 until the second anniversary of the date of the election under  
26 Section 148.006.

27       (c) An election ordered under Subsection (b) must be held as

1 part of the next regularly scheduled general election for municipal  
2 officers that occurs 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 (d) The ballot for an election ordered under Subsection (b)  
6 shall be printed to permit voting for or against the proposition:

7 "Authorizing \_\_\_\_\_ (name of the municipality) to continue  
8 to operate under the state law allowing a municipality to meet and  
9 confer and make agreements with the association representing  
10 municipal employees as provided by state law, preserving the  
11 prohibition against strikes and organized work stoppages, and  
12 providing penalties for strikes and organized work stoppages."

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

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

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

23 Sec. 148.016. ELECTION TO REPEAL AGREEMENT. (a) Not later  
24 than the 45th day after the date a meet and confer agreement is  
25 ratified by the governing body of the municipality and the  
26 recognized employee association, a petition calling for the repeal  
27 of the agreement signed by at least 10 percent of the qualified

1 voters residing in the municipality may be presented to the person  
2 charged with ordering an election under Section 3.004, Election  
3 Code.

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

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

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

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

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

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

1 municipality, other than a statute, ordinance, executive order,  
2 civil service provision, or rule regarding pensions or  
3 pension-related matters.

4 Sec. 148.018. ARBITRATION. The governing body of a  
5 municipality may submit to interest arbitration any issues that  
6 were the subject of negotiation between the municipality and the  
7 employee association. An award or decision by an arbitrator is not  
8 binding on the municipality until it is adopted by the  
9 municipality's governing body.

10 SECTION 2. This Act takes effect September 1, 2013.