

SUBJECT: Authorizing meet and confer for firefighters in certain cities

COMMITTEE: Urban Affairs — favorable, with amendment

VOTE: 5 ayes — Talton, Wong, A. Allen, Blake, Rodriguez

0 nays

2 absent — Bailey, Menendez

WITNESSES: For — Mike Higgins, Texas State Association of Fire Fighters; Walter Hinojosa, Texas AFL-CIO

Against — None

BACKGROUND: Under Government Code, sec. 617.002, a city official may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of public employees. Violation of the prohibition voids the contract. Also, a city official may not recognize a labor organization as the bargaining agent for a group of public employees. Statutes exempt police officers and fire fighters from these prohibitions.

Under the Fire and Police Employee Relations Act, Local Government Code, chap. 174, fire fighters and police officers may organize and bargain collectively with their public employers regarding compensation, hours, and other conditions of employment. Municipalities may adopt this act to make this authority effective — 34 municipalities have done so.

The Municipal Civil Service Law, chap. 143, contains provisions allowing cities to recognize police officer or fire fighter committees. These cities can elect to “meet and confer” with the committees to reach agreements regarding compensation and other conditions — 58 cities have chosen to do so.

In addition, three cities have meet-and-confer rights specially granted by the Legislature under chap. 143, subchaps. H, I, and J: Houston (firefighters in 1993, police in 1997, metro police in 2001), Austin (both in 1995), and Fort Worth (2001).

Texas has 14 cities with populations between 50,000 and 1 million that have not chosen to adopt the Municipal Civil Service Law: Arlington, College Station, Flower Mound, Lewisville, Longview, McKinney, Midland, Missouri City, North Richland Hills, Odessa, Richardson, Round Rock, Sugar Land, and Victoria.

There are 102 cities in Texas with populations between 10,000 and 50,000 that have not chosen to adopt the Municipal Civil Service Law.

DIGEST:

HB 2892 as amended would create Local Government Code, chap. 142, subchapter C, specifying conditions for meet-and-confer agreements between cities and firefighters and applying only to municipalities with populations greater than 50,000 that have adopted chap. 143. It would not apply to municipalities that have adopted chap. 174, to municipalities with a population greater than 1 million that have not adopted chap. 143, or to the three municipalities covered by chap. 143, subchaps. H, I, and J.

Establishing meet and confer. Firefighters would be represented in meet-and-confer negotiations by an association that would be the exclusive bargaining agent. A bargaining association would be recognized by the governing body of the municipality within 30 days of receipt of a petition signed by the majority of firefighters, excluding the heads of the law enforcement agency.

If the bargaining association were not recognized, the governing body could defer and order an election by voters in the municipality held the next authorized uniform election date (currently, the first Saturday in February, the first Saturday in May; the second Saturday in September, or the first Tuesday after the first Monday in November). The authority for a public employer to meet and confer would carry with a majority vote in the election. If an election were held, another petition for recognition could not be submitted for at least two years following the election.

The governing body also could order a certification election to determine that the petition represented the majority of the affected firefighters. The terms of the certification election would have to be agreeable to both the governing body and the association, or either party could request that it be conducted by the American Arbitration Association. The expense of a certification election would be borne by the association. If the petition were certified, then the governing body would have 30 days to either recognize the association or order an election by voters.

Modifying or withdrawing meet and confer. The recognition of one bargaining association to represent firefighters in meet-and-confer agreements could be modified or withdrawn by filing with the municipality a petition signed by a majority of firefighters. Upon receipt of the petition, the municipality could recognize the change or withdrawal or could order a certification election. The municipality could withdraw recognition of a bargaining association with 90 days' written notice or, if the association were initially recognized by the municipality more than two years' before, could order an election to determine whether the public employer could continue to meet and confer.

Agreements. The bill explicitly would not require a public employer or a recognized firefighters' bargaining association to meet and confer on any issue or reach any agreement or memorandum of understanding. A proposed meet-and-confer agreement would be available to the public when it was ready to be ratified by the governing body of the municipality. Deliberations over a proposed meet-and-confer agreement would be conducted in a forum open to the public and in compliance with state law. A meet-and-confer agreement could include a procedure by which the parties agreed to resolve disputes, including binding arbitration.

Any agreement between a city and firefighters' bargaining association would be enforceable and binding on the city and firefighters only if:

- the bargaining association had not advocated an illegal strike;
- the governing body of the municipality ratified the agreement by majority vote; and
- the recognized firefighters' bargaining association ratified the agreement by conducting a secret ballot election of the firefighters of the municipality.

The bill would give jurisdiction to the local district court to hear and resolve a dispute over a ratified agreement. The court could order restraining orders or injunctions to enforce the agreement.

By public petition signed by a number of local registered voters equaling at least 10 percent of the votes cast in the most recent general election, the governing body of a municipality could repeal the agreement as soon as 60 days after ratification. If the governing body chose not to repeal the agreement, voters would decide whether to repeal it in the next general election.

Applicability. A ratified meet-and-confer agreement would supersede all contrary state statutes, local ordinances, and other provisions. It would not have any effect on existing benefits. Strikes or work stoppages would be prohibited.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

HB 2892 would extend to municipalities a workable system that would allow firefighters to negotiate collectively with municipalities and form contracts covering wages, hours, and other conditions of employment. This is the same authority that would be permitted for police officers under HB 304 by Talton, which was approved by the House on March 3.

Cities that employ meet-and-confer negotiations avoid the mandates and formalities required under collective bargaining yet gain the chance to finalize a comprehensive employment contract with a large number of city employees. The process does not compel either party — the municipality or firefighters' bargaining association — to reach any agreement, nor does it require firefighters to form any association. The bill merely would give cities another option for efficient communication with their firefighters in reaching agreements on employment matters, should they so choose.

The bill also would include ample protections for municipalities. The public could review any agreement reached, negotiations would be held in a public forum, and city voters could veto an agreement by petition or election. Cities that have adopted collective bargaining or meet-and-confer negotiations for police officers and fire fighters have not reported complaints from other city employees or suffered any drop in services provided by officers protecting the safety and welfare of citizens.

A new procedure for establishing meet and confer is needed because existing statutory authority under Government Code, chap. 174, can set up an adversarial relationship between parties. Existing law requires that parties collectively bargain in good faith for 60 days and sets up statutory impasse procedures, both of which compel cities toward an agreement. HB 2892 only would establish a method for coming to terms on issues that are of mutual interest. If an issue were not of mutual interest, neither side would be compelled to meet.

OPPONENTS
SAY:

HB 2892 would erode state law prohibiting collective negotiation by public employees, which exists to help ensure the health, safety, and welfare of communities. Although the bill would prohibit strikes and would authorize only meet and confer, it would be a philosophical step in the wrong direction. Cities should retain flexibility in their procedures for negotiating employment contracts, not be constricted by meet and confer.

By giving specific groups of employees a privilege to bargain collectively for wages and other demands, cities increasingly would have to satisfy these groups through concessions at the expense of other municipal employees and the services they provide city residents. HB 2892 could give unequal, preferential treatment to certain classes of civil servants.

OTHER
OPPONENTS
SAY:

This bill is unnecessary. Cities already have a way to engage in this type of negotiation. Under chaps. 174 and 143 of the Local Government Code, fire fighters and police officers may organize and bargain collectively with their public employers. In fact, many municipalities already have done so.

NOTES:

The committee amendment would add a process for withdrawal of authority to meet and confer, extend the period following an election to determine authorization before another could be petitioned, prohibit acceptance of a petition for Municipal Civil Service Law or collective bargaining while the authorized meet and confer was in force, and make various technical changes.

The companion bill, SB 1417 by Gallegos, was reported favorably, as substituted, by the Senate Intergovernmental Relations Committee on April 12 and recommended for the Local and Consent Calendar.

A similar bill that would apply to police officers, HB 304 by Talton, passed the House on March 3 and has been referred to the Senate Intergovernmental Relations Committee and was scheduled for a public hearing on April 21.