

BILL ANALYSIS

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S.B. 1635
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DIGEST AND PURPOSE

Currently, public employees are prohibited from collectively bargaining with their employers, except where a local referendum election has been held to authorize firefighters and police officers to do so. As proposed, S.B. 1635 extends the right to collectively bargain to municipal firefighters without the burden of a local referendum election. It also establishes guidelines and rules for the bargaining process.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 5C, Local Government Code, by adding Chapter 176, as follows:

CHAPTER 176. FIREFIGHTER EMPLOYEE RELATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 176.001. **SHORT TITLE.** Authorizes this chapter to be cited as the Firefighters Employee Relations Act.

Sec. 176.002. **POLICY.** Sets forth state policy regarding firefighters' compensation and conditions of employment, the right of collective bargaining, the state's duty to make available reasonable alternatives to strikes by firefighters, arbitration as a reasonable alternative to strikes, judicial enforcement of the requirements regarding compensation and conditions of employment of firefighters, and the requirement that alternative procedures be expeditious, effective, and binding.

Sec. 176.003. **DEFINITIONS.** Defines "association," "firefighter," "political subdivision," and "public employer."

Sec. 176.004. **LIBERAL CONSTRUCTION.** Requires this chapter to be liberally construed.

Sec. 176.005. **PREEMPTION OF OTHER LAW.** Provides that this chapter preempts all contrary local ordinances, executive orders, statutes, or rules adopted by the state or by a political subdivision or agency of the state, including a personnel board, civil service commission, or home-rule municipality.

Sec. 176.006. **EFFECT ON CIVIL SERVICE PROVISIONS.** (a) Provides that a state or local civil service provision prevails over a collective bargaining contract under this chapter unless the collective bargaining contract specifically provides otherwise.

(b) Prohibits a civil service provision from being repealed or modified by arbitration or judicial action but authorizes it to be interpreted or enforced by an arbitrator or court.

(c) Provides that this chapter does not limit the authority of a municipal fire chief under Chapter 143, except as modified by the parties through collective bargaining.

Sec. 176.007. EFFECT ON EXISTING BENEFITS. Prohibits this chapter from being construed as repealing any existing benefit provided by statute or ordinance concerning firefighters' compensation, pensions, retirement plans, hours of work, conditions of employment, or other emoluments. Provides that this chapter is in addition to the benefits provided by existing statutes and ordinances.

[Sections 176.008-176.020 reserved for expansion]

SUBCHAPTER B. CONDITIONS OF EMPLOYMENT AND RIGHT TO ORGANIZE

Sec. 176.021. PREVAILING WAGE AND WORKING CONDITIONS REQUIRED. Requires a political subdivision that employs firefighters to provide those employees with compensation and other conditions of employment that are substantially equal to the compensation and other conditions of employment that prevail in comparable employment in the private sector and based on prevailing private sector compensation and conditions of employment in the labor market area in other jobs that require the same or similar skills, ability, and training and that may be performed under the same or similar conditions.

Sec. 176.022. CERTAIN PUBLIC EMPLOYERS CONSIDERED TO BE IN COMPLIANCE. (a) Provides that a public employer that has reached an agreement with an association on compensation or other conditions of employment as provided by this chapter is considered to be in compliance with the requirements of Section 176.021 as to the conditions of employment for the duration of the agreement.

(b) Provides that if an arbitration award is rendered as provided by Subchapter D, the public employer involved is considered to be in compliance with the requirements of Section 176.021 as to the conditions of employment provided by the award for the duration of the collective bargaining period to which the award applies.

Sec. 176.023. RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY. Provides that firefighters employed by a political subdivision with a population of 10,000 or more are entitled to organize and bargain collectively with their public employer regarding compensation, hours, and other conditions of employment.

[Sections 176.024-176.100 reserved for expansion]

SUBCHAPTER C. COLLECTIVE BARGAINING

Sec. 176.101. RECOGNITION OF BARGAINING AGENT FOR FIREFIGHTERS. Requires a public employer to recognize an association selected by a majority of the firefighters of the fire department of a political subdivision as the exclusive bargaining agent for the firefighters of that department unless a majority of the firefighters withdraw the recognition.

Sec. 176.102. QUESTION REGARDING REPRESENTATION. (a) Requires a question of whether an association is the majority representative of the employees of a department under this section and Sections 176.101 and 176.103 to be resolved by a fair election conducted according to procedures agreed on by the parties.

(b) Authorizes either party, if the parties are unable to agree on election procedures

under Subsection (a), to request the American Arbitration Association to conduct the election and certify the results. Provides that certification of the results of an election under this section shall resolve the question regarding representation. Requires the public employer to pay the expenses of the election, except that if two or more associations seek recognition as the bargaining agent, the associations are required to pay the costs of the election equally.

Sec. 176.103. DUTY TO BARGAIN COLLECTIVELY IN GOOD FAITH. (a) Requires the public employer and the association to bargain collectively if the firefighters of a political subdivision are represented by an association as provided by this section and Sections 176.101, 176.102, and 176.104.

(b) Provides that for purposes of this section, the duty to bargain collectively means a public employer and an association shall meet at reasonable times, confer in good faith regarding compensation, hours, and other conditions of employment or the negotiation of an agreement or a question arising under an agreement, and execute a written contract incorporating any agreement reached if either party requests a written contract.

(c) Provides that this section does not require a public employer or an association to agree to a proposal or make a concession.

Sec. 176.104. DESIGNATION OF NEGOTIATOR. Authorizes a public employer or an association to designate one or more persons to negotiate or bargain on its behalf.

Sec. 176.105. NOTICE TO PUBLIC EMPLOYER REGARDING CERTAIN ISSUES. Requires an association to serve on the public employer written notice of its request for collective bargaining at least 120 days before the date on which the public employer's current fiscal operating budget ends if compensation or another matter that requires an appropriation of money by any governing body is the subject of collective bargaining under this chapter.

Sec. 176.106. OPEN DELIBERATIONS. Requires a deliberation relating to collective bargaining between a public employer and an association, a deliberation by a quorum of an association authorized to bargain collectively, or a deliberation by a member of a public employer authorized to bargain collectively to be open to the public and comply with state law.

Sec. 176.107. EFFECT OF AGREEMENT. Provides that an agreement under this chapter is binding and enforceable against a public employer, an association, and a firefighter covered by the agreement.

[Sections 176.108-176.150 reserved for expansion]

SUBCHAPTER D. MEDIATION; ARBITRATION

Sec. 176.151. MEDIATION. (a) Authorizes a public employer and an association that is a bargaining agent to use mediation to assist them in reaching an agreement.

(b) Authorizes the mediator, if one is used, to be appointed by agreement of the parties or by an appropriate state agency.

(c) Authorizes a mediator to hold separate or joint conferences as the mediator considers expedient to settle issues voluntarily, amicably, and expeditiously and notwithstanding Subsection (d), recommend or suggest to the parties any proposal or procedure that in the mediator's judgment might lead to settlement.

(d) Prohibits a mediator from making a public recommendation on any negotiation

issue in connection with the mediator's service or making a public statement or report that evaluates the relative merits of the parties' positions.

Sec. 176.152. **IMPASSE.** (a) Provides that for purposes of this subchapter, an impasse in the collective bargaining process is considered to have occurred if the parties do not settle in writing each issue in dispute before the 61st day after the date on which the collective bargaining process begins.

(b) Authorizes the period specified in Subsection (a) to be extended by written agreement of the parties. Requires an extension to be for a definite period not to exceed 15 days.

Sec. 176.153. **REQUEST FOR ARBITRATION; AGREEMENT TO ARBITRATE.** (a) Authorizes a public employer or an association that is a bargaining agent to request the appointment of an arbitration board if: the parties reach an impasse in collective bargaining or are unable to settle after the appropriate lawmaking body fails to approve a contract reached through collective bargaining; the parties made every reasonable effort, including mediation, to settle the dispute through good-faith collective bargaining; and the public employer or association gives written notice to the other party specifying the issue in dispute.

(b) Requires a request for arbitration to be made by a certain deadline.

(c) Requires an election by both parties to arbitrate to be made by a certain deadline and be a written agreement to arbitrate.

(d) Prohibits a party from requesting arbitration more than once in a fiscal year.

Sec. 176.154. **ARBITRATION BOARD.** (a) Requires each party, not later than the fifth day after the date an agreement to arbitrate is executed, to select one arbitrator and immediately notify the other party in writing of the name and address of the arbitrator selected.

(b) Requires the arbitrators named under Subsection (a), not later than the 10th day after the date an agreement to arbitrate is executed, to attempt to select a neutral third arbitrator. Authorizes either party, if the arbitrators are unable to agree on a third arbitrator, to request the American Arbitration Association to select the third arbitrator, and the American Arbitration Association is authorized to appoint the third arbitrator according to its fair and regular procedures. Unless both parties consent, the third arbitrator is prohibited from being the same individual who served as a mediator under Section 176.151.

(c) Provides that the arbitrator selected under Subsection (b) presides over the arbitration board.

Sec. 176.155. **ARBITRATION HEARING.** (a) Requires a presiding arbitrator to call a hearing to be held not later than the 10th day after the date on which the presiding arbitrator is appointed and notify the other arbitrators, the public employer, and the association in writing of the time and place of the hearing, not later than the eighth day before the date of the hearing.

(b) Requires an arbitration hearing to end not later than the 20th day after the date the hearing begins.

(c) Requires an arbitration hearing to be informal.

Sec. 176.156. **SCOPE OF ARBITRATION.** (a) Provides that the issues to be arbitrated are all matters that the parties are unable to resolve through collective bargaining and mediation

procedures required by this chapter.

- (b) Requires an arbitration board to render an award in accordance with the requirements of Section 176.021. Requires the board, in settling disputes relating to compensation, hours, and other conditions of employment, to consider certain conditions.

Sec. 176.157. EVIDENCE; OATH; SUBPOENA. (a) Provides that the rules of evidence applicable to judicial proceedings are not binding in an arbitration hearing.

- (b) Authorizes an arbitration board to receive in evidence any documentary evidence or other information the board considers relevant, administer oaths, and issue subpoenas to require the attendance and testimony of witnesses and the production of books, records, and other evidence relevant to an issue presented to the board for determination.

Sec. 176.158. ARBITRATION AWARD. (a) Requires an arbitration board, not later than the 10th day after the date the hearing ends, to make written findings and render a written award on the issues presented to the board.

- (b) Requires a copy of the findings and award to be mailed or delivered to the public employer and the association.

- (c) Authorizes an increase in compensation awarded by an arbitration board under this subchapter to take effect only at the beginning of the next fiscal year after the date of the award.

- (d) Provides that if a new fiscal year begins after the initiation of arbitration procedures under this subchapter, Subsection (c) does not apply and an increase in compensation may be retroactive to the beginning of the fiscal year.

Sec. 176.159. EFFECT OF AWARD. Provides that if a majority decision of an arbitration board is supported by competent, material, and substantial evidence on the whole record, the decision is final and binding on the parties and may be enforced by either party or by the arbitration board in a district court for the judicial district in which a majority of the affected employees reside.

Sec. 176.160. AMENDMENT OF AWARD. Authorizes the parties to an arbitration award to amend the award by written agreement at any time.

Sec. 176.161. BEGINNING OF NEW FISCAL YEAR. Provides that if a new fiscal year begins after the initiation of arbitration procedures under this subchapter but before an award is rendered or enforced the dispute is not moot, the jurisdiction of the arbitration board is not impaired, and the arbitration award is not impaired.

Sec. 176.162. EXTENSION OF PERIOD. Authorizes a period specified by Section 176.155 or 176.158 to be extended by the written agreement of the parties for a reasonable period or by the arbitration board for good cause for one or more periods that in the aggregate do not exceed 20 days.

Sec. 176.163. COMPULSORY ARBITRATION NOT REQUIRED. Provides that this chapter does not require compulsory arbitration.

Sec. 176.164. COMPENSATION OF ARBITRATORS; EXPENSES OF ARBITRATION. (a) Requires the compensation of an arbitrator selected by a public employer

to be paid by the public employer.

(b) Requires the compensation, if any, of an arbitrator selected by employees to be paid by the association representing the employees.

(c) Requires the public employer and the association representing the employees to jointly pay in even proportions the compensation of the neutral arbitrator and the stenographic and other expenses incurred by the arbitration board in connection with the arbitration proceedings.

(d) Requires a party to arbitration, if the party requires a transcript of the arbitration proceedings, to pay the cost of the transcript.

[Sections 176.165-176.200 reserved for expansion]

SUBCHAPTER E. STRIKES AND LOCKOUTS

Sec. 176.201. DEFINITION. Defines "strike."

Sec. 176.202. STRIKES, SLOWDOWNS, AND LOCKOUTS PROHIBITED. Prohibits a firefighter from engaging in a strike or slowdown. Prohibits a lockout of firefighters.

Sec. 176.203. LOCKOUT BY POLITICAL SUBDIVISION; INJUNCTION; PENALTY. Requires a court, if a political subdivision or its designated agent or a department or agency head engages in a lockout of firefighters, to prohibit the lockout, impose a fine not to exceed \$2,000 on any individual violator, or both prohibit the lockout and impose the fine.

Sec. 176.204. STRIKE; PENALTY AGAINST ASSOCIATION. (a) Requires a district court for the judicial district in which a political subdivision is located that finds that an association has called, ordered, aided, or abetted a strike by firefighters to impose a fine on the association for each day of the strike equal to 1/26 of the total of the association's annual membership dues, but not less than \$2,500 or more than \$20,000 and order the forfeiture of any membership dues checkoff for a specified period not to exceed 12 months.

(b) Authorizes the court, if it finds on appeal by an association that the political subdivision or its representative engaged in acts of extreme provocation that detract substantially from the association's responsibility for the strike, to reduce the amount of the fine.

(c) Provides that an association that appeals a fine under Subsection (b) is not required to pay the fine until the appeal is finally determined.

Sec. 176.205. STRIKE; PENALTY AGAINST INDIVIDUAL. Provides that if a firefighter engages in a strike, interferes with the political subdivision, prevents the political subdivision from engaging in its duty, directs any employee of the political subdivision to decline to work or to stop or slow down work, causes another to fail or refuse to deliver goods or services to the political subdivision, pickets for any of those acts, or conspires to perform any of those acts, the firefighter's compensation in any form may not increase in any manner until after the first anniversary of the date the individual resumes normal working duties, and the firefighter shall be placed on probation for two years regarding civil service status, tenure of employment, or contract of employment to which the individual was previously entitled.

[Sections 176.206-176.250 reserved for expansion]

SUBCHAPTER F. JUDICIAL ENFORCEMENT AND REVIEW

Sec. 176.251. JUDICIAL ENFORCEMENT GENERALLY. Authorizes a district court for the judicial district in which a political subdivision is located, on the application of a party aggrieved by an act or omission of the other party that relates to the rights or duties under this chapter, to issue a restraining order, temporary or permanent injunction, contempt order, or other writ, order, or process appropriate to enforce this chapter.

Sec. 176.252. JUDICIAL ENFORCEMENT WHEN PUBLIC EMPLOYER DECLINES ARBITRATION. (a) Authorizes a district court for the judicial district in which a majority of affected employees reside, on the application of the association, if an association requests arbitration as provided by Subchapter D and a public employer refuses to engage in arbitration, to enforce the requirements of Section 176.021 as to any unsettled issue relating to compensation or other conditions of employment of firefighters.

(b) Requires the court, if it finds that the public employer has violated Section 176.021, to order the public employer to make the affected employees whole as to the employees' past losses; declare the compensation or other conditions of employment required by Section 176.021 for the period, not to exceed one year, as to which the parties are bargaining; and award the association reasonable attorney's fees.

(c) Requires the court costs of an action under this section, including costs for a master if one is appointed, to be taxed to the public employer.

Sec. 176.253. JUDICIAL REVIEW OF ARBITRATION AWARD. (a) Authorizes an award of an arbitration board to be reviewed by a district court for the judicial district in which the political subdivision is located only on the grounds that the arbitration board was without jurisdiction, the arbitration board exceeded its jurisdiction, the order is not supported by competent, material, and substantial evidence on the whole record, or the order was obtained by fraud, collusion, or similar unlawful means.

(b) Provides that the pendency of a review proceeding does not automatically stay enforcement of the arbitration board's order.

SECTION 2. Effective date: September 1, 2001.

Provides that the change in law made by this Act does not apply to a municipality that operates under Chapter 143H or I, Local Government Code, until after the expiration of the agreement ratified by the municipality and the firefighters association under Chapter 143H or I, Local Government Code.

Provides that the change in law made by this Act does not apply to a political subdivision that operates under Chapter 174, Local Government Code, and that has not conducted a successful repeal election on or after the effective date of this Act.