

BILL ANALYSIS

Senate Research Center

C.S.H.B. 2892
By: Luna (Gallegos)
Intergovernmental Relations
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Since 1947, except in certain cases specifically authorized by the Texas Legislature, Texas firefighters associations have not legally been able to "meet and confer" or reach agreements with their employers on issues concerning staffing, pay, benefits, equipment, or training. Unlike requirements in collective bargaining, "meet and confer" practices have been successful because they are interest-based negotiations in which neither the employer nor the employee is mandated to meet or come to an agreement.

C.S.H.B. 2892 allows for an association representing firefighters employed by a municipality with a population of 50,000 or more and those that have adopted Chapter 143, Local Government Code, to "meet and confer" with the public employer concerning wage and employment conditions. C.S.H.B. 2892 would not apply to municipalities which have adopted Chapter 174, Local Government Code, or those that have a population of one million or more and have not adopted Chapter 143, Local Government Code.

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 Chapter 142, Local Government Code, by designating Sections 142.001-142.013 as Subchapter A and adding a heading for Subchapter A, to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Amends Chapter 142, Local Government Code, by adding Subchapter C, as follows:

SUBCHAPTER C. LOCAL CONTROL OF FIREFIGHTER EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES

Sec. 142.101. **APPLICABILITY.** Sets forth the municipalities to which this subchapter is applicable.

Sec. 142.102. **DEFINITIONS.** Defines "firefighter," "firefighters association," and "public employer."

Sec. 142.103. **PETITION FOR RECOGNITION: ELECTION OR ACTION BY GOVERNING BODY.** (a) Requires the governing body of a municipality, not later than the 30th day after the date the governing body receives from a firefighters association a petition signed by the majority of all firefighters, excluding the head of the fire department for the municipality and excluding the employees exempt under Section 142.108(b), that requests recognition of the association as the sole and exclusive bargaining agent for all the firefighters employed by the municipality, excluding the head of the fire department for the municipality and excluding the exempt employees, to perform specific actions.

(b) Requires the governing body of a municipality, if the governing body orders a certification election under Subsection (a)(3) and the association named in the petition is certified to represent a majority of the affected firefighters in the municipality, not later than the 30th day after the date that results of the election are certified, to perform specific actions.

Sec. 142.104. CERTIFICATION ELECTION. (a) Requires a certification election ordered under Section 142.103(a)(3) to determine whether a firefighters association represents a majority of the covered firefighters, except as provided by Subsection (b), to be conducted according to procedures agreeable to the parties.

(b) Authorizes either party, if the parties are unable to agree on procedures for the certification election, to request the American Arbitration Association to conduct the election and to certify the results of the election.

(c) Provides that certification of the results of an election under this section resolves the question concerning representation.

(d) Provides that the association is liable for the expenses of the certification election, except that if two or more associations seeking recognition as the sole and exclusive bargaining agent submit a petition signed by at least thirty percent of the firefighters eligible to sign the petition for recognition, all the associations named in any petition shall share equally the costs of the election.

Sec. 142.105. ELECTION TO AUTHORIZE OPERATING UNDER THIS SUBCHAPTER. (a) Authorizes the governing body of a municipality that receives a petition for recognition under Section 142.103 to order an election to determine whether a public employer may meet and confer under this subchapter.

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

(c) Requires the ballot for an election ordered under this section to be printed to allow voting for or against the specific proposition.

(d) Requires an election called under this section to be held and the returns prepared and canvassed in conformity with the Election Code.

(e) Authorizes the municipality, if an election authorized under this section is held, to operate under the other provisions of this subchapter only if a majority of the votes cast at the election favor the proposition.

(f) Prohibits an association, if an election authorized under this section is held, from submitting a petition for recognition to the governing body of the municipality under Section 142.103 before the second anniversary of the date of the election.

Sec. 142.106. CHANGE OR MODIFICATION OF RECOGNITION. Authorizes the firefighters to modify or change the recognition of the association granted under this subchapter by filing with the governing body of the municipality a petition signed by a majority of all the covered firefighters. Authorizes the governing body of the municipality to recognize the change or modification as provided by the petition or order a certification election in accordance with Section 142.104 regarding whether to do so.

Sec. 142.107. STRIKES PROHIBITED. Prohibits a firefighter employed by a municipality from engaging in a strike or organized work stoppage against this state or the municipality. Provides that a firefighter who participates in a strike forfeits any civil service rights, reemployment rights, and other rights, benefits, or privileges the firefighter may have as a result of the person's employment or prior employment with the

municipality. Provides that this section does not affect the right of a person to cease work if the person is not acting in concert with others in an organized work stoppage.

Sec. 142.108. RECOGNITION OF FIREFIGHTERS ASSOCIATION. Requires a public employer in a municipality that chooses to meet and confer under this subchapter to recognize an association that is recognized under Section 142.103 or 142.104 as the sole and exclusive bargaining agent for the covered firefighters described in the petition for recognition, excluding the head of the fire department and excluding the employees exempt under this section, in accordance with this subchapter and the petition. Provides that, for the purposes of this section, exempt employees are the employees appointed by the head of the fire department of the municipality under Section 143.014 or that are exempt by the mutual agreement of the recognized firefighters association and the public employer. Requires the public employer to recognize the firefighters association until recognition of the association is withdrawn, in accordance with Section 142.106, by a majority of the firefighters eligible to sign a petition for recognition.

Sec. 142.109. GENERAL PROVISIONS RELATING TO AGREEMENTS. (a) Prohibits a municipality acting under this subchapter from being denied local control over the wages, salaries, rates of pay, hours of work, or other terms and conditions of employment to the extent the public employer and the firefighters association recognized as the sole and exclusive bargaining agent under this subchapter agree as provided by this subchapter, if the agreement is ratified and not withdrawn in accordance with this subchapter. Provides that applicable statutes and applicable local orders, ordinances, and civil service rules apply to an issue not governed by the meet and confer agreement.

(b) Requires a meet and confer agreement under this subchapter to be written.

(c) Provides that this subchapter does not require a public employer or a recognized firefighters association to meet and confer on any issue or reach an agreement.

(d) Authorizes a public employer and the recognized firefighters association to meet and confer only if the association does not advocate an illegal strike by public employees.

(e) Prohibits a public employer, while a meet and confer agreement under this subchapter between the public employer and the recognized firefighters association is in effect, from accepting a petition, with regard to the firefighters of the municipality requesting an election to adopt municipal civil service under Chapter 143 or collective bargaining under Chapter 174.

Sec. 142.110. SELECTION OF BARGAINING AGENT; BARGAINING UNIT. Requires the public employer's chief executive officer, or the chief executive officer's designee, to select one or more persons to represent the public employer as its sole and exclusive bargaining agent to meet and confer on issues related to the wages, hours of employment, and other terms and conditions of employment of firefighters by the municipality. Authorizes a firefighters association to designate one or more person to negotiate or bargain on the association's behalf. Provides that a municipality's bargaining unit is composed of all the firefighters of the municipality who are not the head of the fire department or exempt under Section 142.108(b).

Sec. 142.111. PROTECTED RIGHTS OF FIREFIGHTERS. Authorizes a member of the municipality's bargaining unit, for any disciplinary appeal, to be represented by the firefighters association or by any person the member selects. Prohibits a meet and confer agreement ratified under this subchapter from interfering with the right of a member of a bargaining unit to pursue allegations of discrimination based on race, creed, color, national origin, religion, age, sex, or disability with the Texas Workforce Commission civil rights division or the federal Equal Employment Opportunity Commission or to pursue affirmative action litigation.

Sec. 142.112. OPEN RECORDS. Provides that a proposed meet and confer agreement and a document prepared and used by the municipality, including a public employer, in connection with the proposed agreement are available to the public under Chapter 552, Government Code, only after the agreement is ready to be ratified by the governing body of the municipality. Provides that this section does not affect the application of Subchapter C, Chapter 552, Government Code, to a document prepared and used in connection with the agreement.

Sec. 142.113. OPEN DELIBERATIONS. (a) Requires a deliberation relating to meeting and conferring between a public employer and a firefighters association, a deliberation relating to an agreement or proposed agreement under this subchapter by a quorum of a firefighters association authorized to meet and confer, or a deliberation by a quorum of the sole and exclusive bargaining agent of the public employer authorized to meet and confer to be open to the public and comply with state law.

(b) Prohibits Subsection (a) from being construed to prohibit the representative of the public employer or the representatives of the firefighters association from conducting private caucuses that are not open to the public during meet and confer negotiations.

Sec. 142.114. RATIFICATION AND ENFORCEABILITY OF AGREEMENT. Sets forth the circumstances by which an agreement under this subchapter is enforceable and binding on the public employer, the recognized firefighters association, and the firefighters covered by the meet and confer agreement. Authorizes a meet and confer agreement ratified under this section to establish a procedure by which the parties agree to resolve disputes related to a right, duty, or obligation provided by the agreement, including binding arbitration on a question involving interpretation of the agreement. Provides that a state district court of a judicial district in which the municipality is located has jurisdiction to hear and resolve a dispute under the ratified meet and confer agreement on the application of the party to the agreement aggrieved by an action or omission of the other party when the action or omission is related to a right, duty, or obligation provided by the agreement. Authorizes the court to issue certain orders, injunctions, writs, and processes.

Sec. 142.115. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO OPERATE UNDER THIS SUBCHAPTER. (a) Authorizes the governing body of a municipality that granted recognition of a firefighters association under Section 142.103 without conducting an election under Section 142.105 to withdraw recognition of the association by providing to the association not less than 90 days' written notice that the governing body is withdrawing recognition of the association and any agreement between the governing body and the association will not be renewed.

(b) Authorizes the governing body of a municipality that granted recognition of a firefighters association after conducting an election under Section 142.105 to order an election to determine whether a public employer may continue to meet and confer under this subchapter. Prohibits the governing body from ordering an election under this subsection until the second anniversary of the date of the election under Section 142.105.

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

(d) Requires the ballot for an election ordered under Subsection (b) to be printed to allow voting for or against the specific proposition.

(e) Requires an election ordered under Subsection (b) to be held and the returns prepared and canvassed in conformity with the Election Code.

(f) Authorizes the municipality, if an election ordered under Subsection (b) is held, to continue to operate under this subchapter only if a majority of the votes cast at the election favor the proposition.

(g) Prohibits an association, if an election ordered under Subsection (b) is held, from submitting a petition for recognition to the governing body of the municipality under Section 142.103 before the second anniversary of the date of the election.

Sec. 142.116. ELECTION TO REPEAL AGREEMENT. (a) Authorizes a petition calling for the repeal of the agreement signed by a number of registered voters residing in the municipality equal to at least ten percent of the votes cast at the most recent general election held in the municipality, not later than the 60th day after the date a meet and confer agreement is ratified by the governing body of the municipality and the recognized firefighters association, to be presented to the person charged with ordering an election under Section 3.004, Election Code.

(b) Requires the governing body of a municipality, if a petition is presented under Subsection (a), to repeal the meet and confer agreement or certify that it is not repealing the agreement and call an election to determine whether to repeal the agreement.

(c) Authorizes an election called under Subsection (b)(2) to be held as part of the next regularly scheduled general election for the municipality. Requires the ballot to be printed to permit voting for or against the specific proposition.

(d) Provides that, if a majority of the votes cast at the election favor the repeal of the agreement, the agreement is void.

Sec. 142.117. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. Provides that a written meet and confer agreement ratified under this subchapter preempts, during the term of the agreement and to the extent of any conflict, all contrary state statutes, local ordinances, executive orders, civil service provisions, or rules adopted by the head of the fire department or municipality or by a division or agent of the municipality, such as a personnel board or a civil service commission.

Sec. 142.118. PREEMPTION OF OTHER LAW. Provides that this subchapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by a municipality. Provides that Section 617.002, Government Code, does not apply to an agreement made or an action taken under this subchapter.

Sec. 142.119. EFFECT ON EXISTING BENEFITS. Prohibits this subchapter 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, except as expressly provided in a ratified meet and confer agreement. Provides that this subchapter is in addition to the benefits provided by existing statutes and ordinances.

SECTION 3. Effective date: September 1, 2005.