

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1417  
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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 firefighter 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 to come to an agreement.

C.S.S.B. 1417 allows for an association representing firefighters employed by a municipality with a population of 50,000 or more to "meet-and-confer" with the public employer concerning wage and employment conditions. The Act does not apply to municipalities which have adopted Chapter 174 of the Local Government Code or that have a population greater than one million and have not adopted Chapter 143 of the 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.** (a) Provides that this subchapter applies only to a municipality with a certain population or that has adopted Chapter 143 (Municipal Civil Service).

(b) Provides that this subchapter does not apply to certain municipalities.

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, no later than the 30th day after the date the governing body of a municipality 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 exempt employees, to take certain actions regarding granting recognition and ordering of a certification election.

(b) Requires the governing body, if the governing body of a municipality 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 of the municipality, to take certain actions regarding a granting of recognition no later than the 30th day after the date that results of that election are certified.

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 to be conducted according to procedures agreeable to the parties, except as provided by Subsection (b).

(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 the 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 30 percent of the firefighters eligible to sign the petition for recognition, all the associations named in any petition are required to 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) Requires 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 proposition and contain specific text.

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

(e) Authorizes a municipality, if an election authorized under this section is held, to operate under the other provision 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 first anniversary of the date of the election.

Sec. 142.106. CHANGE OR MODIFICATION OF RECOGNITION. (a) 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 covered firefighters.

(b) 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. (a) Prohibits a firefighter employed by a municipality from engaging in a strike or organized work stoppage against this state or the municipality.

(b) Provides that a firefighter who participates in a strike forfeits certain rights, benefits, or privileges the firefighter may have as a result of the person's employment or prior employment with the municipality.

(c) 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. (a) 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 Subsection (b), in accordance with this subchapter and the petition.

(b) Provides that for the purposes of Subsection (a), 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.

(c) 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 certain 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 the 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 a certain municipal service and certain collective bargaining.

Sec. 142.110. SELECTION OF BARGAINING AGENT; BARGAINING UNIT. (a) Requires a 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 certain terms and conditions of employment of firefighters by the municipality.

(b) Authorizes a firefighter association to designate one or more persons to negotiate or bargain on the association's behalf.

(c) Provide 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 FIREFIGHTER. (a) Authorizes a member of a municipality's bargaining unit, for any disciplinary appeal, to be represented by the firefighters association or by any person the member selects.

(b) 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. (a) 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 (Public Information), Government Code, only after the agreement is ratified by the governing body of the municipality.

(b) Provides that this section does not affect the application of Subchapter C (Information Excepted From Required Disclosure), to a document prepared and used in connection with the agreement.

Sec. 142.113. OPEN DELIBERATIONS. 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.

Sec. 142.114. RATIFICATION AND ENFORCEABILITY OF AGREEMENT. (a) Provides that 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 only if certain procedures are followed.

(b) Authorizes a meet and confer agreement ratified as described by Subsection (a) 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.

(c) 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 a 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 a court to issue proper restraining orders, temporary and permanent injunctions, or any other writ, order, or process, including contempt orders, that are appropriate to enforcing the agreement.

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 the association not less than 90 days written notice of certain actions.

(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 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 proposition and to contain certain text.

(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 10 percent of the votes cast at the most recent general election held in the municipality to be presented to the person charged with ordering an election under Section 3.004 (Election of Political Subdivision), Election Code, no 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.

(b) Requires governing body of the 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 that the ballot to be printed to provide for voting for or against the proposition and contain specific text.

(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. (a) Provides that this subchapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by a municipality.

(b) Provides that Section 617.002 (Collective Bargaining by Public Employees Prohibited), Government Code, does not apply to an agreement made or an action taken under this subchapter.

Sec. 142.118. EFFECTS ON EXISTING BENEFITS. Prohibits this subchapter from being construed as repealing any existing benefit provided by statute or ordinance concerning firefighters' certain 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.