

BILL ANALYSIS

Senate Research Center
81R4478 JSC-F

S.B. 2446
By: Uresti et al.
Intergovernmental Relations
4/14/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, firefighters and police officers of the City of San Antonio are covered by meet and confer legislation, but there are no provisions covering the employment matters of San Antonio's other municipal employees. The City of San Antonio is in support of the proposed legislation and has included it in its 2009 Legislative Program for the 81st Legislature, Regular Session, adopted on October 16, 2008.

As proposed, S.B. 2446 prohibits a municipality with a population of more than one million from being denied local control over wages, salaries, rates of pay, hours of work, other terms and conditions of employment, or other state-mandated personnel issues. S.B. 2446 prohibits a covered employee from engaging in a strike or organized work stoppage against this state or the municipality. This bill requires the governing body of a municipality, not later than the 30th day after the date the governing body receives from an association a petition signed by the majority of all covered employees that requests recognition of the association as the sole and exclusive bargaining agent for all the covered employees, to perform certain actions related to recognizing an employee association.

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 Subtitle A, Title 5, Local Government Code, by adding Chapter 148, as follows:

CHAPTER 148. LOCAL CONTROL OF MUNICIPAL EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES

Sec. 148.001. **APPLICABILITY.** (a) Provides that this chapter applies only to a municipality with a population of more than one million that has adopted Chapter 174 (Fire and Police Employee Relations) and is not covered by Chapter 146 (Local Control of Municipal Employment Matters in Certain Municipalities) or 147 (Local Control of Firefighter and Police Officer Employment Matters in Certain Municipalities with Population of One Million or More).

(b) Provides that this chapter does not apply to firefighters or police officers who are covered by Subchapter B (Local Control of Police Officer Employment Matters in Certain Municipalities) of Chapter 142 (Assistance, Benefits, and Working Conditions of Municipal Officers and Employees), Subchapter H (Local Control of Fire Fighter Employment Matters in Municipalities with Population of 1.5 Million or More), I (Fire Fighter and Police Officer Employment Matters in Certain Municipalities), or J (Local Control of Police Officer Employment Matters in Municipalities with Population of 1.5 Million or More) of Chapter 143 (Municipal Civil Service for Firefighters and Police Officers), or Chapter 174; an employee association (association) in which employees described by Subdivision (1) participate; or employees of a municipally owned utility or other board or political subdivision whose wages, salaries, rates of pay, hours, working

conditions, or other terms and conditions of employment are established and governed by an appointed board independent from the municipal governing body.

Sec. 148.002. DEFINITIONS. Defines "confidential employee," "covered employee," "employee association," and "public employer."

Sec. 148.003. GENERAL PROVISIONS RELATING TO AGREEMENTS AND RECOGNITION. (a) Prohibits a municipality from being denied local control over wages, salaries, rates of pay, hours of work, other terms and conditions of employment, or other state-mandated personnel issues. Authorizes a public employer to enter into a mutual agreement governing these issues with an association recognized under this chapter as the sole and exclusive bargaining agent for all covered employees that does not advocate the illegal right to strike by municipal employees. Provides that the applicable statutes, local ordinances, and civil service rules govern a term or condition of employment on which the public employer and the association do not agree.

(b) Requires that an agreement under this chapter be written.

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

(d) Provides that this chapter does not authorize an agreement regarding pension or pension-related matters governed by statute.

Sec. 148.004. PETITION FOR RECOGNITION: ELECTION OR ACTION BY GOVERNING BODY. (a) Requires the governing body of a municipality (governing body), not later than the 30th day after the date the governing body receives from an association a petition signed by the majority of all covered employees that requests recognition of the association as the sole and exclusive bargaining agent for all the covered employees, to perform certain actions.

(b) Requires the governing body, if the governing body orders a certification election under Subsection (a)(3) (relating to determining whether the association represents a majority of the covered employees) and the association named in the petition is certified to represent a majority of the covered employees, to perform certain actions not later than the 30th day after the date that results of that election are certified.

Sec. 148.005. CERTIFICATION ELECTION. (a) Requires that a certification election ordered under Section 148.004(a)(3) to determine whether an association represents a majority of the covered employees, except as provided by Subsection (b), 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) Requires that the results of an election be certified if the association receives a majority of the valid votes cast in the election.

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

(e) 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 employees 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. 148.006. ELECTION TO AUTHORIZE OPERATING UNDER THIS CHAPTER.

(a) Authorizes the governing body that receives a petition for recognition under Section

148.004 to order an election to determine whether a public employer is authorized to meet and confer under this chapter.

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

(c) Sets forth the proposed language of the ballot.

(d) Requires that an election called under this section 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 chapter 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 under Section 148.004 before the second anniversary of the date of the election.

Sec. 148.007. CHANGE OR MODIFICATION OF RECOGNITION. (a) Authorizes covered employees to modify, change, or withdraw the recognition of the association granted under this chapter by filing with the governing body a petition signed by a majority of all covered employees.

(b) Authorizes the governing body to recognize the modification, change, or withdrawal as provided by the petition to order a certification election in accordance with Section 148.005 regarding whether to do so.

Sec. 148.008. STRIKES PROHIBITED. (a) Prohibits a covered employee from engaging in a strike or organized work stoppage against this state or the municipality.

(b) Provides that a covered employee who participates in a strike forfeits any civil service rights, reemployment rights, and other rights, benefits, or privileges the employee may have as a result of the employee'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. 148.009. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) Requires a public employer in a municipality that chooses to meet and confer under this chapter to recognize an association that is recognized under Section 148.004 or 148.005 as the sole and exclusive bargaining agent for the covered employees.

(b) Requires the public employer to recognize the association until recognition of the association is withdrawn, in accordance with Section 148.007, by a majority of the covered employees eligible to sign a petition for recognition.

Sec. 148.010. SELECTION OF BARGAINING AGENT; BARGAINING UNIT. (a) 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 covered employees.

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

(c) Provides that a municipality's bargaining unit is composed of all the covered employees.

Sec. 148.011. **PROTECTED RIGHTS OF EMPLOYEES.** Prohibits a meet and confer agreement ratified under this chapter from interfering with the right of a covered employee 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. 148.012. **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 ready to be ratified by the governing body.

(b) Provides that this section does not affect the application of Subchapter C (Information Excepted from Required Disclosure), Chapter 552, Government Code, to a document prepared and used in connection with the agreement.

Sec. 148.013. **OPEN DELIBERATIONS.** (a) Requires that deliberations relating to a meet and confer agreement or proposed agreement under this chapter between representatives of the public employer and representatives of the association recognized under this chapter as the sole and exclusive bargaining agent for the covered employees be open to the public and comply with state law.

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

Sec. 148.014. **RATIFICATION AND ENFORCEABILITY OF AGREEMENT.** (a) Provides that an agreement under this chapter is enforceable and binding on the public employer, the recognized association, and the employees covered by the meet and confer agreement only if the governing body ratified the agreement by majority vote and the recognized association ratified the agreement by conducting a secret ballot election at which the majority of the covered employees who voted in the election favored ratifying the agreement.

(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 the 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. 148.015. **ACTION OR ELECTION TO REPEAL AUTHORIZATION TO OPERATE UNDER THIS CHAPTER.** (a) Authorizes a governing body that granted recognition of an association under Section 148.004 without conducting an election under Section 148.006 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 that granted recognition of an association after conducting an election under Section 148.006 to order an election to determine

whether a public employer is authorized to continue to meet and confer under this chapter. Prohibits the governing body from ordering an election under this subsection until the second anniversary of the date of the election under Section 148.006.

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

(d) Sets forth the required language of the ballot for an election ordered under Subsection (b).

(e) Requires that an election ordered under Subsection (b) 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 chapter 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 under Section 148.004 before the second anniversary of the date of the election.

Sec. 148.016. ELECTION TO REPEAL AGREEMENT. Authorizes a petition calling for the repeal of the agreement signed by at least 10 percent of the qualified voters residing in the municipality, not later than the 45th day after the date a meet and confer agreement is ratified by the governing body and the recognized association, to be presented to the person charged with ordering the election under Section 3.004 (Election of Political Subdivision), Election Code.

(b) Requires the governing body, 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 or at a special election called by the governing body for that purpose. Sets forth the required language of the ballot.

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

Sec. 148.017. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. Provides that a written meet and confer agreement ratified under this chapter 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 this state or a political subdivision or agent of this state, including a personnel board, civil service commission, or home-rule municipality, other than a statute, ordinance, executive order, civil service provision, or rule regarding pensions or pension-related matters.

SECTION 2. Effective date: September 1, 2009.