

BILL ANALYSIS

Senate Research Center
79R13882 YDB-F

C.S.H.B. 304
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Intergovernmental Relations
4/25/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Since 1947, except in certain cases specifically authorized by the Texas Legislature, Texas peace officer associations have not been able to legally "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. "Meet and confer" rights have been granted by the legislature to the Houston Fire Department (1993), Austin Police Department and Austin Fire Department (1995), the Houston Police Department (1997), the Fort Worth Police and Fire Department (2001), and the Houston Metropolitan Transit Authority Police Department (2001).

C.S.H.B. 304 allows for an association representing police officers 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. C.S.H.B. 304 would not apply to municipalities which adopted Chapter 174 of the Local Government Code or those that have greater than one million in population and have not adopted Chapter 143 of the Local Government Code. This bill would not apply to Houston, Austin, or Fort Worth since they are covered by other "meet and confer" statutes.

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, to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

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

SUBCHAPTER B. LOCAL CONTROL OF POLICE OFFICER EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES

Sec. 142.051. APPLICABILITY. (a) Provides that except as provided by Subsection (b), this subchapter applies only to a municipality that meets certain criteria.

(b) Provides that this subchapter does not apply to a municipality that meets certain criteria.

Sec. 142.052. DEFINITIONS. Defines "police officer," "police officers association," and "public employer."

Sec. 142.053. PETITION FOR RECOGNITION: ELECTION OR ACTION BY GOVERNING BODY. (a) Requires the governing body of a municipality to take certain actions relating to a police officers association, not later than the 30th day after the date it receives from a police officers association (association) a petition requesting recognition

of the association as the sole and exclusive bargaining agent for all police officers employed by the municipality signed by the majority of all police officers, excluding the head of the law enforcement agency for the municipality.

(b) Requires the governing body, if it orders a certification election under Subsection (a)(3) and the association named in the petition is certified to represent a majority of the affected police officers of the municipality, to take certain actions relating to granting recognition to the association not later than the 30th day after the date the election results are certified.

Sec. 142.054. CERTIFICATION ELECTION. (a) Requires a certification election ordered under Section 142.053(a)(3) to determine whether an association represents a majority of the covered police officers, 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) Sets forth 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 30 percent of the police officers eligible to sign the recognition, all the associations named in any petition are required to share equally the costs of the election.

Sec. 142.055. ELECTION TO AUTHORIZE OPERATING UNDER THIS SUBCHAPTER. (a) Authorizes the governing body that receives a petition for recognition under Section 142.053 to order an election to determine whether a public employer is authorized to 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 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 permit voting for or against the proposition and sets forth specific wording for the 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 142.053 before the second anniversary of the date of the election.

Sec. 142.056. CHANGE OR MODIFICATION OF RECOGNITION. (a) Authorizes the police officers to modify or change the recognition of the association granted under this subchapter by filing with the governing body a petition signed by a majority of all covered police officers.

(b) Authorizes the governing body to take certain actions relating to the petition.

Sec. 142.057. STRIKES PROHIBITED. (a) Prohibits a police officer employed by a municipality from engaging in a strike or organized work stoppage against this state or the municipality.

(b) Provides that a police officer who participates in a strike forfeits any civil service rights, reemployment rights, and other rights, benefits, or privileges the police officer may have as a result of the officer'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. 142.058. RECOGNITION OF POLICE OFFICERS 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 142.053 or 142.054 as the sole and exclusive bargaining agent for the covered police officers described in the petition for recognition, excluding the head of the law enforcement agency 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 law enforcement agency of the municipality under Section 143.014 (Appointment or Removal of Person Classified Immediately Below Department Head) or that are exempt by the mutual agreement of the recognized police officers association and the public employer.

(c) Requires the public employer to recognize the police officers association until recognition of the association is withdrawn, in accordance with Section 142.056, by a majority of the police officers eligible to sign a petition for recognition.

Sec. 142.059. 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 police officers associations 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 association to meet and confer on any issue or reach an agreement.

(d) Authorizes a public employer and the recognized 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 association is in effect, from accepting a petition, with regard to the police officers of the municipality requesting an election to adopt municipal civil service or collective bargaining.

Sec. 142.060. SELECTION OF BARGAINING AGENT; BARGAINING UNIT. (a) Requires the public employer's chief executive officer or 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 police officers by the municipality.

(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 police officers of the municipality who are not the head of the law enforcement agency or exempt under Section 142.058(b).

Sec. 142.061. PROTECTED RIGHTS OF POLICE OFFICER. (a) Authorizes a member of the municipality's bargaining unit, for any disciplinary appeal, to be represented by the police officers 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 the bargaining unit to pursue allegations of discrimination based on the 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. 142.062. 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, Chapter 552, Government Code, to a document prepared and used in connection with the agreement.

Sec. 142.063. OPEN DELIBERATIONS. (a) Requires deliberations relating to a meet and confer agreement or proposed agreement under this subchapter between representatives of the public employer and representatives of the police officers association elected by a majority vote of the officers to be the sole and exclusive bargaining agent of the covered officers to 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 police officers association from conducting private caucuses that are not open to the public during meet and confer negotiations.

Sec. 142.064. RATIFICATION AND ENFORCEABILITY OF AGREEMENT. (a) Provides that an agreement under this subchapter is enforceable and binding on the public employer, the recognized association, and the police officers covered by the meet and confer agreement only if certain conditions are present.

(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. 142.065. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO OPERATE UNDER THIS SUBCHAPTER. (a) Authorizes the governing body that granted an association recognition under Section 142.053 without conducting an election under Section 142.055 to withdraw recognition of the association by providing to the association not less the 90 days' written notice that the governing body is withdrawing recognition of the association; and any agreement between the governing body and the municipality will not be renewed.

(b) Authorizes the governing body that granted recognition of an association after conducting an election under Section 142.055 to order an election to determine whether a public employer is authorized to 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 142.055.

(c) Requires an election ordered under this 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 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 sets forth specific wording for the 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 under Section 142.053 before the second anniversary of the date of the election.

Sec. 142.066. 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 municipality, not later than the 60th 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 an election under Section 3.004 (Election of a Political Subdivision), Election Code.

(b) Requires the governing body, if a petition is presented under Subsection (a), to take certain actions.

(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 provide for voting for or against the proposition and sets forth specific wording for the proposition.

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

Sec. 142.067 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 law enforcement agency or municipality or by a division or agent of the municipality, such as a personnel board or a civil service commission.

Sec. 142.068. EFFECT ON EXISTING BENEFITS AND RIGHTS. (a) Prohibits this subchapter from being construed as repealing any existing benefit provided by statute or ordinance concerning police officers' 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.

(b) Prohibits this subchapter from being construed to interfere with a police officer's constitutionally protected rights of freedom of speech, freedom of association, and freedom to endorse or dissent from any agreement.

SECTION 3. Effective date: September 1, 2005.