

BILL ANALYSIS

Senate Research Center
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S.B. 764
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Intergovernmental Relations
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, not all employees working for the City of Austin are able to negotiate their wages or working conditions. Firefighters and police officers are currently covered by meet and confer and/or collective bargaining legislation, but there are no provisions covering the employment matters of Austin's other municipal employees. This bill would grant meet and confer privileges to all City of Austin municipal employees.

As proposed, S.B. 764 grants municipal employees of the City of Austin the right to meet and confer with city management over issues such as wages, hours, working conditions, and other terms and conditions of employment, and prohibits strikes and work stoppages by municipal employees.

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 146, Local Government Code, by designating Sections 146.001-146.017 as Subchapter A, and adding a subchapter heading to read as follows:

SUBCHAPTER A. MUNICIPALITY WITH POPULATION OF 1.5 MILLION OR MORE

SECTION 2. Amends Sections 146.001-146.004, Local Government Code, as follows:

Sec. 146.001. **APPLICABILITY.** (a) Provides that this subchapter, rather than chapter, applies only to a municipality with a population of 1.5 million or more.

(b) Makes a conforming change.

Sec. 146.002. **DEFINITIONS.** Makes a conforming change.

Sec. 146.003. **GENERAL PROVISIONS RELATING TO AGREEMENTS AND RECOGNITION.** (a) Makes a conforming change.

(b) Makes a conforming change.

(c) Makes a conforming change.

(d) Provides that this subchapter, rather than chapter, does not authorize an agreement regarding pension or pension-related matters governed by Chapter 88 (H.B. 1573), Acts of the 77th Legislature, Regular Session, 2001 (Article 6243h, V.T.C.S.), rather than Chapter 358, Acts of the 48th Legislature, Regular Session, 1943 (Article 6243g, V.T.C.S.), or a successor statute.

Sec. 146.004. **PETITION FOR RECOGNITION: ELECTION OR ACTION BY GOVERNING BODY.** (a) Makes conforming changes.

(b) Makes conforming changes.

SECTION 3. Amends the heading to Section 146.006, Local Government Code, to read as follows:

Sec. 146.006. ELECTION TO AUTHORIZE OPERATING UNDER THIS SUBCHAPTER.

SECTION 4. Amends Sections 146.006(a) and (e), Local Government Code, to make conforming changes.

SECTION 5. Amends Section 146.007(a), Local Government Code, to make a conforming change.

SECTION 6. Amends Section 146.009(a), Local Government Code, to make a conforming change.

SECTION 7. Amends Section 146.011, Local Government Code, to make a conforming change.

SECTION 8. Amends Section 146.013(a), Local Government Code, to make conforming changes.

SECTION 9. Amends Section 146.014(a), Local Government Code, to make a conforming change.

SECTION 10. Amends the heading to Section 146.015, Local Government Code, to read as follows:

Sec. 146.015. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO OPERATE UNDER THIS SUBCHAPTER.

SECTION 11. Amends Sections 146.015(b) and (f), Local Government Code, to make conforming changes.

SECTION 12. Amends Section 146.017, Local Government Code, to make a conforming change.

SECTION 13. Amends Chapter 146, Local Government Code, by adding Subchapter B, as follows:

SUBCHAPTER B. MUNICIPALITY WITH POPULATION OF 650,000 OR MORE THAT OPERATES UNDER CITY MANAGER FORM OF GOVERNMENT

Sec. 146.101. APPLICABILITY. (a) Provides that this subchapter applies only to a municipality with a population of 650,000 or more that operates under a city manager form of government, in which all members of the municipality's governing body are elected at large, and that recognized associations under Subchapter I (Fire Fighter and Police Officer Employment Matters in Certain Municipalities), Chapter 143 (Municipal Civil Service for Firefighters and Police Officers), as the exclusive bargaining agents for both firefighters and police officers before September 1, 2005.

(b) Provides that this subchapter does not apply to firefighters or police officers who are covered by Subchapter I, Chapter 143; emergency medical services personnel; or an employee association in which employees described by Subdivisions (1) (regarding firefighters or police officers covered by Subchapter I, Chapter 143) and (2) (regarding emergency medical services personnel) participate.

(c) Provides that a municipality that was subject to this subchapter by application of Subsection (a) and that subsequently changes its governing body or form of government continues to be subject to this subchapter, regardless of whether the

municipality continues to meet the requirements of Subdivisions (1) and (2) of that subsection.

Sec. 146.102. DEFINITIONS. Defines "appointed employee," "covered employee," "emergency medical services personnel," "employee association," and "public employer."

Sec. 146.103. 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 employee association recognized under this subchapter 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 employee association do not agree.

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

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

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

Sec. 146.104. 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 of a municipality receives from an employee association a petition signed by the majority of all covered employees that requests recognition of the employee association as the sole and exclusive bargaining agent for all the covered employees, to grant recognition of the employee association as requested in the petition and find that a public employer is authorized to meet and confer under this subchapter without conducting an election by the voters in the municipality under Section 146.106; defer granting recognition of the employee association and order an election by the voters in the municipality under Section 146.106 regarding whether a public employer is authorized to meet and confer under this subchapter; or order a certification election under Section 146.105 to determine whether the employee association represents a majority of the covered employees.

(b) Requires the governing body, if the governing body orders a certification election under Subsection (a)(3) (regarding the ordering of a certification election under Section 146.105 to determine whether the employee association represents a majority of the covered employees) and the employee association named in the petition is certified to represent a majority of the covered employees, not later than the 30th day after the date results of that election are certified, to grant recognition of the association as requested in the petition for recognition and find that a public employer is authorized to meet and confer under this subchapter without conducting an election by the voters in the municipality under Section 146.106; or defer granting recognition of the employee association and order an election by the voters in the municipality under Section 146.106 regarding whether a public employer is authorized to meet and confer under this subchapter.

Sec. 146.105. CERTIFICATION ELECTION. (a) Requires that, except as provided by Subsection (b), a certification election ordered under Section 146.104(a)(3) to determine whether an employee association represents a majority of the covered employees be conducted according to procedures agreeable to the parties.

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

(c) Requires that the results of an election be certified if the employee association receives a majority of valid votes cast in the election.

(d) Provides that the employee 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. 146.106. ELECTION TO AUTHORIZE OPERATING UNDER THIS SUBCHAPTER. (a) Authorizes the governing body that receives a petition for recognition under Section 146.104 to order an election to determine whether a public employer is authorized to meet and confer under this subchapter.

(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) Requires that the ballot for an election ordered under this section be printed to permit voting for or against a proposition with certain language as set forth in this subsection.

(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 subchapter only if a majority of the votes cast at the election favor the proposition.

(f) Prohibits an employee association, if an election authorized under this section is held, from submitting a petition for recognition to the governing body under Section 146.104 before the second anniversary of the date of the election.

Sec. 146.107. CHANGE OR MODIFICATION OF RECOGNITION. (a) Authorizes the municipal employees to modify or change the recognition of the employee association granted under this subchapter by filing with the governing body a petition signed by a majority of all covered employees.

(b) Authorizes the governing body to recognize the change or modification as provided by the petition, or order a certification election in accordance with Section 146.105 regarding whether to do so.

Sec. 146.108. STRIKES PROHIBITED. (a) Prohibits a municipal employee from engaging in a strike or organized work stoppage against this state or the municipality.

(b) Provides that a municipal 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. 146.109. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) Requires a public employer in a municipality that chooses to meet and confer under this subchapter to recognize an employee association that is recognized under Section 146.104 or 146.105 as the sole and exclusive bargaining agent for the covered employees.

(b) Requires the public employer to recognize the employee association until recognition of the employee association is withdrawn, in accordance with Section 146.107, by a majority of the municipal employees eligible to sign a petition for recognition.

Sec. 146.110. **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 municipal employees.

(b) Authorizes an employee association to designate one or more persons to negotiate or bargain on the association's behalf. Prohibits an employee association from designating as one of its bargaining agents a person employed as an attorney for the public employer.

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

Sec. 146.111. **PROTECTED RIGHTS OF EMPLOYEES.** 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. 146.112. **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 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. 146.113. **OPEN DELIBERATIONS.** (a) Requires that deliberations relating to a meet and confer agreement or proposed agreement under this subchapter between representatives of the public employer and representatives of the employee association recognized under this subchapter 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 employee association from conducting private caucuses that are not open to the public during meet and confer negotiations.

Sec. 146.114. **RATIFICATION AND ENFORCEABILITY OF AGREEMENT.** (a) Provides that an agreement under this subchapter is enforceable and binding on the public employer, the recognized employee association, and the employees covered by the meet and confer agreement only if the governing body of the municipality ratified the agreement by a majority vote; and the recognized employee association ratified the agreement by conducting a secret ballot election at which the majority of the covered employees who voted in the election and are members of the association favored ratifying the agreement.

(b) Provides that a meet and confer agreement ratified as described by Subsection (a) may 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 state district 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. 146.115. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO OPERATE UNDER THIS SUBCHAPTER. (a) Authorizes the governing body that granted recognition of an employee association under Section 146.104 without conducting an election under Section 146.106 to withdraw recognition of the employee association by providing the employee association not less than 90 days' written notice that the governing body is withdrawing recognition of the employee association, and that any agreement between the governing body and the employee association will not be renewed.

(b) Authorizes the governing body that granted recognition of an employee association after conducting an election under Section 146.106 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 146.106.

(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 of the municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

(d) Requires that the ballot for an election ordered under Subsection (b) be printed with certain language to permit voting for or against the proposition.

(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 subchapter only if a majority of the votes cast at the election favor the proposition.

(g) Prohibits an employee 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 146.104 before the second anniversary of the date of the election.

Sec. 146.116. ELECTION TO REPEAL AGREEMENT. (a) Provides that not later than the 45th day after the date a meet and confer agreement is ratified by the governing body and the recognized employee association, a petition calling for the repeal of the agreement signed by at least 10 percent of the qualified voters residing in the municipality may be presented to the person charged with ordering an 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) (regarding the calling of an election to determine whether to repeal the agreement) 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. Requires the ballot to be printed with certain language to permit voting for or against the 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. 146.117. 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 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.

Sec. 146.118. ARBITRATION. Authorizes the governing body to submit to interest arbitration any issues that were the subject of negotiation between the municipality and the employee association. Provides that an award or decision by an arbitrator is not binding on the municipality until it is adopted by the municipality's governing body.

SECTION 14. Effective date: September 1, 2009.