

BILL ANALYSIS

C.S.S.B. 1433
By: Madla
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Most benefits affecting firefighters which are provided for in statute affect firefighters employed by municipalities. Within the last ten to fifteen years, the establishment of special purpose districts, such as emergency service districts, and the creation of fire departments created through an inter-local agreement between two or more entities have become commonplace.

This trend frequently creates a situation where non-municipal firefighters do not have access to the same benefits and basic rights as municipal firefighters. For this reason, legislation is necessary to provide longevity pay, payroll deduction of membership dues, and holiday and vacation leave as threshold benefits for those non-municipal firefighters.

S.B. 1433 does not apply to a volunteer fire department. S.B. 1433 provides for disciplinary suspension or dismissal of firefighters, and appeal procedures, for firefighters, of disciplinary suspensions or dismissals.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Subtitle C, Title 5, Local Government Code, by adding Chapter 179, as follows:

CHAPTER 179. CONDITIONS OF EMPLOYMENT FOR FIREFIGHTERS OF CERTAIN DISTRICTS AND ENTITIES

Sec. 179.001. **APPLICABILITY.** (a) Provides that this chapter applies to a fire department of and firefighters employed by certain entities.

(b) Provides that this chapter does not apply to a volunteer fire department or the members or employees of a volunteer fire department that is operating under a contract with an emergency services district.

(c) Provides that, for the purposes of this section, a reference to a municipality or a municipal official in a provision of law made applicable by this chapter to a district or entity described by Subsection (a) is considered to be a reference to the district or entity or the official of the district or entity responsible for the performance of the duty to which the provision applies.

(d) Provides that if this chapter applies to the fire department of and firefighters employed by an emergency services district and the population of the district decreases to less than 30,000, the applicability of this chapter in relation to the district is not affected.

Sec. 179.002. **DEFINITIONS.** Defines "emergency services employer" and "firefighter."

Sec. 179.003. PAYROLL DEDUCTIONS; LONGEVITY PAY; CLASSIFICATION PAY; PENALTY. (a) Provides that Sections 141.008, 141.032, 141.033, and 141.034 apply to a firefighter employed by an emergency services employer.

(b) Provides that the penalty under Section 141.035 applies to a person who is in charge of the fire department of an emergency services employer or who is responsible for setting the compensation for firefighters employed by an emergency services employer in accordance with this section.

Sec. 179.004. ASSISTANCE; BENEFITS; WORKING CONDITIONS; PENALTY. Provides that Sections 142.001, 142.0013, 142.0015, 142.0016, 142.004, 142.005, 142.006, 142.008, and 142.009 apply to a firefighter employed by an emergency services employer.

Sec. 179.005. EXCLUSIVE APPEAL PROCEDURE. Provides that this chapter provides the exclusive procedure for the administration and appeal of a disciplinary action against a firefighter covered by this chapter.

Sec. 179.006. DISCIPLINARY SUSPENSION OR DISMISSAL. (a) Authorizes the head of a fire department, for just cause, to suspend or dismiss from employment a firefighter for violating a rule of the fire department or of the emergency services employer. A rule described by this section must have been adopted by the governing body of the emergency services employer.

(b) Authorizes the suspension of a firefighter for a reasonable period, not to exceed 15 days, or dismissal from employment with the fire department.

(c) Requires the department head, if the department head suspends or dismisses a firefighter, within 120 hours after the hour of suspension or dismissal to file a written statement of the reasons for the suspension or dismissal with the governing body of the emergency services employer; and deliver in person to the firefighter a copy of the statement and a written statement that if the firefighter wishes to appeal the suspension or dismissal, the firefighter must file a written notice of appeal with the governing body not later than the 10th day after the date the firefighter receives the copy of the statements.

(d) Requires that the written statement filed by the department head with the governing body list each fire department or emergency services employer rule allegedly violated by the firefighter and specifically describe the actions of the firefighter that allegedly violate the rule.

(e) Prohibits a department head from amending a written statement of the reasons for a firefighter's suspension or dismissal from employment submitted under Subsection (c).

Sec. 179.007. APPEAL OF DISCIPLINARY SUSPENSION OR DISMISSAL. (a) Requires the governing body of the emergency services employer to hold a hearing on the appeal and render a written decision not later than the 30th day after the date the governing body receives the notice of appeal from the firefighter, if a firefighter files a notice of appeal of suspension or dismissal from employment. Authorizes the firefighter and the governing body to agree to postpone the hearing for a definite period.

(b) Authorizes the department head, in a hearing conducted under this section, to only allege actions and rule violations included in the department head's original written statement submitted to the governing body of the emergency services employer under Section 179.006(c)(1).

(c) Authorizes the governing body of the emergency services employer to deliberate in closed session after a hearing conducted under this section. Prohibits the governing body, in reaching its decision after the hearing, from considering

evidence that was not presented at the hearing. The governing body must vote on the decision regarding an appeal under this section in open session.

(d) Requires that the governing body of an emergency services employer, in its decision, state whether the firefighter is permanently dismissed; temporarily suspended; or reinstated to the firefighter's former position or status in the fire department.

(e) Authorizes the governing body to order a reduction in the period of suspension, if in a decision rendered under this section the governing body finds that the period of disciplinary suspension should be reduced.

(f) Entitles a firefighter who is reinstated to the position or class of service from which the firefighter was suspended or dismissed to full compensation for the actual time lost as a result of the suspension or dismissal at the rate of pay provided for the position held or class of service assigned; and restoration of or credit for any other benefits lost as a result of the suspension or dismissal, including sick leave, vacation leave, and service credit in a retirement system.

(g) Requires the emergency services employer to make any standard payroll deductions for retirement and other benefits restored as provided by Subsection (f)(2) from any compensation paid under Subsection (f)(1); and to make any of the employer's standard corresponding contributions to the retirement system or other applicable benefit system.

(h) Provides that a firefighter may be suspended or dismissed from employment only for a violation of the rules adopted by the governing body of the emergency services employer and only after a finding by the governing body of the truth of the specific charges made against the firefighter.

Sec. 179.008. APPEAL PROCEDURE. (a) Requires that a notice of appeal filed under Section 179.007 include the basis for the appeal and a request for a hearing; and contain a statement denying the truth of the charge as made, a statement taking exception to the legal sufficiency of the charge, a statement alleging that the recommended action does not fit the offense or alleged offense, or a combination of these statements.

(b) Provides that in each hearing, appeal, or review of any kind in which the governing body of the emergency services employer performs an adjudicatory function, the firefighter who is the subject of the hearing, appeal, or review is entitled to be represented by counsel or any other person the firefighter chooses. The hearing must be held in public.

(c) Authorizes the governing body to issue subpoenas and subpoenas duces tecum for the attendance of witnesses and for the production of documentary material.

(d) Authorizes the firefighter to request the governing body to subpoena any books, records, documents, papers, accounts, or witnesses that the firefighter considers pertinent to the case. The firefighter must make the request before the 10th day before the date the appeal hearing will be held. Requires the governing body, if it does not subpoena the material, before the third day before the date the hearing will be held, to make a written report to the firefighter stating the reason the governing body will not subpoena the requested material. The report must be read into the public record of the hearing.

(e) Authorizes that witnesses be placed under the rule at a hearing conducted by the governing body of the emergency services employer.

(f) Provides that only the evidence submitted at the hearing may be considered by the governing body.

(g) Requires that a public record of each proceeding be made, with copies available at cost.

(h) Authorizes the governing body to designate three persons who are qualified voters within the employer's jurisdiction to serve as an appeal panel to hear and decide the appeal in lieu of the governing body. The appeal panel has the same powers and duties related to the appeal as the governing body, including the power to issue subpoenas.

Sec. 179.009. HEARING EXAMINER. (a) Authorizes a firefighter to appeal to a hearing examiner instead of the governing body. The appealing firefighter must submit to the governing body a written request as part of the original notice of appeal stating the person's decision to appeal to an independent third party hearing examiner.

(b) Provides that the hearing examiner's decision is final and binding on all parties. If the firefighter decides to appeal to an independent third party hearing examiner, the person automatically waives all rights to appeal to a district court except as provided by Section 179.010(e).

(c) Requires that if the appealing firefighter chooses to appeal to a hearing examiner, the firefighter and department head, or their designees, first attempt to agree on the selection of an impartial hearing examiner. If the parties do not agree within 10 days after the date the appeal is filed, the parties are required to immediately request a list of seven qualified neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service, or their successors in function. The firefighter and the department head, or their designees, may agree on one of the seven neutral arbitrators on the list. If the parties do not agree within five working days after the date they receive the list, each party or the party's designee is required to alternate striking a name from the list, and the name remaining is the hearing examiner. The parties or their designees are required to agree on a date for the hearing.

(d) Requires that the appeal hearing begin as soon as the hearing examiner can be scheduled. If the firefighter receives notice that the hearing examiner cannot begin the hearing within 45 days after the date of selection, the firefighter, within two days after receiving the notice, is authorized to call for the selection of a new hearing examiner using the procedure prescribed by Subsection (c).

(e) The hearing examiner has the same duties and powers as the governing body of the emergency services employer, including the power to issue subpoenas, in a hearing under this section.

(f) Requires the appealing firefighter, in a hearing conducted under this section, to pay the hearing examiner's fees and expenses. Requires the party who calls a witness to pay the costs of the witness.

Sec. 179.101. DISTRICT COURT PETITION. (a) Authorizes a firefighter who is dissatisfied with the decision of the governing body of the emergency services employer to file a petition in the district court asking that the decision be set aside. The petition must be filed not later than the 10th day after the date the governing body's final decision is sent to the firefighter by certified mail; or personally received by the firefighter or by the firefighter's designee.

(b) Provides that an appeal under this section is by trial de novo. Authorizes the district court to grant the appropriate legal or equitable relief necessary to carry out the purposes of this chapter. Authorizes that the relief include reinstatement with back pay if an order of suspension or dismissal is set aside.

(c) Authorizes the court to award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party.

(d) Requires that the court to order the emergency services employer to pay lost wages to the firefighter, if the court finds in favor of the firefighter.

(e) Authorizes the district court to hear an appeal of a hearing examiner's award only on the grounds that the hearing examiner was without jurisdiction or exceeded the examiner's jurisdiction or that the order was procured by fraud, collusion, or other unlawful means.

(f) Provides that an appeal under this section must be brought in a district court having jurisdiction in the emergency services district or in a political subdivision in which the fire department is located, as applicable.

SECTION 2. Effective Date

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

The Committee Substitute modifies the original by providing that this chapter does not apply to a volunteer fire department or the members or employees of a volunteer fire department that is operating under a contract with an emergency services district.

The substitute removes from the original, the authorization for an emergency services employer to hold an election to adopt or repeal a Municipal Civil Services System, by changing Section 179.005 to give firefighters an exclusive appeal procedure.

The substitute adds Sections 179.006 - 179.010 to the original bill. These sections provide for disciplinary suspension or dismissal of firefighters, and appeal procedures, for firefighters, of disciplinary suspensions or dismissals.