

By: Madla

S.B. No. 1433

Substitute the following for S.B. No. 1433:

By: Allen of Dallas

C.S.S.B. No. 1433

A BILL TO BE ENTITLED

AN ACT

relating to the conditions of employment for firefighters employed by certain districts and entities; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 5, Local Government Code, is amended by adding Chapter 179 to read as follows:

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

Sec. 179.001. APPLICABILITY. (a) This chapter applies to a fire department of and firefighters employed by:

(1) an emergency services district created under Chapter 775, Health and Safety Code, with a population of 30,000 or more; and

(2) an entity created by an interlocal agreement between two or more political subdivisions of this state.

(b) 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) For 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

1 performance of the duty to which the provision applies.

2 (d) If this chapter applies to the fire department of and
3 firefighters employed by an emergency services district and the
4 population of the district decreases to less than 30,000, the
5 applicability of this chapter in relation to the district is not
6 affected.

7 Sec. 179.002. DEFINITIONS. In this chapter:

8 (1) "Emergency services employer" means an emergency
9 services district created under Chapter 775, Health and Safety
10 Code, or an entity created by an interlocal agreement between two or
11 more political subdivisions of this state.

12 (2) "Firefighter" means a person defined as fire
13 protection personnel under Section 419.021, Government Code.

14 Sec. 179.003. PAYROLL DEDUCTIONS; LONGEVITY PAY;
15 CLASSIFICATION PAY; PENALTY. (a) Sections 141.008, 141.032,
16 141.033, and 141.034 apply to a firefighter employed by an
17 emergency services employer.

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

23 Sec. 179.004. ASSISTANCE; BENEFITS; WORKING CONDITIONS;
24 PENALTY. Sections 142.001, 142.0013, 142.0015, 142.0016, 142.004,
25 142.005, 142.006, 142.008, and 142.009 apply to a firefighter
26 employed by an emergency services employer.

27 Sec. 179.005. EXCLUSIVE APPEAL PROCEDURE. This chapter

1 provides the exclusive procedure for the administration and appeal
2 of a disciplinary action against a firefighter covered by this
3 chapter.

4 Sec. 179.006. DISCIPLINARY SUSPENSION OR DISMISSAL. (a)
5 The head of a fire department for just cause may suspend or dismiss
6 from employment a firefighter for violating a rule of the fire
7 department or of the emergency services employer. A rule described
8 by this subsection must have been adopted by the governing body of
9 the emergency services employer.

10 (b) A firefighter may be suspended for a reasonable period
11 not to exceed 15 days or may be dismissed from employment with the
12 fire department.

13 (c) If a department head suspends or dismisses a
14 firefighter, the department head shall, within 120 hours after the
15 hour of suspension or dismissal:

16 (1) file a written statement of the reasons for the
17 suspension or dismissal with the governing body of the emergency
18 services employer; and

19 (2) deliver in person to the firefighter a copy of the
20 statement described by Subdivision (1) and a written statement that
21 if the firefighter wishes to appeal the suspension or dismissal,
22 the firefighter must file a written notice of appeal with the
23 governing body not later than the 10th day after the date the
24 firefighter receives the copy of the statement described by
25 Subdivision (1) and the statement described by this subdivision.

26 (d) The written statement filed by the department head with
27 the governing body under Subsection (c)(1) must list each fire

1 department or emergency services employer rule allegedly violated
2 by the firefighter and specifically describe the actions of the
3 firefighter that allegedly violate the rule.

4 (e) A department head may not amend a written statement of
5 the reasons for a firefighter's suspension or dismissal from
6 employment submitted under Subsection (c).

7 Sec. 179.007. APPEAL OF DISCIPLINARY SUSPENSION OR
8 DISMISSAL. (a) If a firefighter files a notice of appeal of the
9 firefighter's suspension or dismissal from employment with the
10 governing body of the emergency services employer, the governing
11 body shall hold a hearing on the appeal and render a written
12 decision not later than the 30th day after the date the governing
13 body receives the notice of appeal from the firefighter. The
14 firefighter and the governing body may agree to postpone the
15 hearing for a definite period.

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

21 (c) The governing body of the emergency services employer
22 may deliberate in closed session after a hearing conducted under
23 this section. In reaching its decision after the hearing, the
24 governing body may not consider evidence that was not presented at
25 the hearing. The governing body must vote on the decision regarding
26 an appeal under this section in open session.

27 (d) In its decision, the governing body of an emergency

1 services employer shall state whether the firefighter is:

2 (1) permanently dismissed from employment with the
3 fire department;

4 (2) temporarily suspended from employment with the
5 fire department; or

6 (3) reinstated to the firefighter's former position or
7 status in the fire department.

8 (e) If in a decision rendered under this section the
9 governing body of the emergency services employer finds that the
10 period of disciplinary suspension should be reduced, the governing
11 body may order a reduction in the period of suspension.

12 (f) A firefighter who is reinstated to the position or class
13 of service from which the firefighter was suspended or dismissed is
14 entitled to:

15 (1) full compensation for the actual time lost as a
16 result of the suspension or dismissal at the rate of pay provided
17 for the position held or class of service assigned; and

18 (2) restoration of or credit for any other benefits
19 lost as a result of the suspension or dismissal, including sick
20 leave, vacation leave, and service credit in a retirement system.

21 (g) The emergency services employer shall:

22 (1) make any standard payroll deductions for
23 retirement and other benefits restored as provided by Subsection
24 (f)(2) from any compensation paid under Subsection (f)(1); and

25 (2) make any of the employer's standard corresponding
26 contributions to the retirement system or other applicable benefit
27 system.

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

6 Sec. 179.008. APPEAL PROCEDURE. (a) A notice of appeal
7 filed under Section 179.007 must:

8 (1) include the basis for the appeal and a request for
9 a hearing; and

10 (2) contain a statement denying the truth of the
11 charge as made, a statement taking exception to the legal
12 sufficiency of the charge, a statement alleging that the
13 recommended action does not fit the offense or alleged offense, or a
14 combination of these statements.

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

21 (c) The governing body of the emergency services employer
22 may issue subpoenas and subpoenas duces tecum for the attendance of
23 witnesses and for the production of documentary material.

24 (d) The firefighter may request the governing body of the
25 emergency services employer to subpoena any books, records,
26 documents, papers, accounts, or witnesses that the firefighter
27 considers pertinent to the case. The firefighter must make the

1 request before the 10th day before the date the appeal hearing will
2 be held. If the governing body does not subpoena the material, the
3 governing body shall, before the third day before the date the
4 hearing will be held, make a written report to the firefighter
5 stating the reason the governing body will not subpoena the
6 requested material. The report must be read into the public record
7 of the hearing.

8 (e) Witnesses may be placed under the rule at a hearing
9 conducted by the governing body of the emergency services employer.

10 (f) Only the evidence submitted at the hearing may be
11 considered by the governing body of the emergency services
12 employer.

13 (g) A public record of each proceeding shall be made, with
14 copies available at cost.

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

21 Sec. 179.009. HEARING EXAMINER. (a) A firefighter may
22 choose to appeal to a hearing examiner instead of the governing body
23 of the emergency services employer. The appealing firefighter must
24 submit to the governing body a written request as part of the
25 original notice of appeal required under this chapter stating the
26 person's decision to appeal to an independent third party hearing
27 examiner.

1 (b) The hearing examiner's decision is final and binding on
2 all parties. If the firefighter decides to appeal to an independent
3 third party hearing examiner, the person automatically waives all
4 rights to appeal to a district court except as provided by Section
5 179.010(e).

6 (c) If the appealing firefighter chooses to appeal to a
7 hearing examiner, the firefighter and the department head, or their
8 designees, shall first attempt to agree on the selection of an
9 impartial hearing examiner. If the parties do not agree on the
10 selection of a hearing examiner within 10 days after the date the
11 appeal is filed, the parties shall immediately request a list of
12 seven qualified neutral arbitrators from the American Arbitration
13 Association or the Federal Mediation and Conciliation Service, or
14 their successors in function. The firefighter and the department
15 head, or their designees, may agree on one of the seven neutral
16 arbitrators on the list. If the parties do not agree within five
17 working days after the date they receive the list, each party or the
18 party's designee shall alternate striking a name from the list, and
19 the name remaining is the hearing examiner. The parties or their
20 designees shall agree on a date for the hearing.

21 (d) The appeal hearing shall begin as soon as the hearing
22 examiner can be scheduled. If the firefighter receives notice that
23 the hearing examiner cannot begin the hearing within 45 days after
24 the date of selection, the firefighter, within two days after
25 receiving the notice, may call for the selection of a new hearing
26 examiner using the procedure prescribed by Subsection (c).

27 (e) In a hearing conducted under this section, the hearing

1 examiner has the same duties and powers as the governing body of the
2 emergency services employer, including the power to issue
3 subpoenas.

4 (f) In a hearing conducted under this section, the appealing
5 firefighter shall pay the hearing examiner's fees and expenses.
6 The party who calls a witness shall pay the costs of the witness.

7 Sec. 179.010. DISTRICT COURT PETITION. (a) A firefighter
8 who is dissatisfied with the decision of the governing body of the
9 emergency services employer may file a petition in a district court
10 asking that the decision be set aside. The petition must be filed
11 not later than the 10th day after the date the governing body's
12 final decision is:

13 (1) sent to the firefighter by certified mail; or

14 (2) personally received by the firefighter or by the
15 firefighter's designee.

16 (b) An appeal under this section is by trial de novo. The
17 district court may grant the appropriate legal or equitable relief
18 necessary to carry out the purposes of this chapter. The relief may
19 include reinstatement with back pay if an order of suspension or
20 dismissal is set aside.

21 (c) The court may award reasonable attorney's fees to the
22 prevailing party and assess court costs against the nonprevailing
23 party.

24 (d) If the court finds in favor of the firefighter, the
25 court shall order the emergency services employer to pay lost wages
26 to the firefighter.

27 (e) A district court may hear an appeal of a hearing

1 examiner's award only on the grounds that the hearing examiner was
2 without jurisdiction or exceeded the examiner's jurisdiction or
3 that the order was procured by fraud, collusion, or other unlawful
4 means.

5 (f) An appeal under this section must be brought in a
6 district court having jurisdiction in the emergency services
7 district or in a political subdivision in which the fire department
8 is located, as applicable.

9 SECTION 2. This Act takes effect September 1, 2005.