

By: Barrientos

S.B. No. 911

A BILL TO BE ENTITLED

1 AN ACT

2 relating to firefighter employment in certain political
3 subdivisions; providing criminal penalties.

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

5 SECTION 1. Subtitle C, Title 5, Local Government Code, is
6 amended by adding Chapter 176 to read as follows:

7 CHAPTER 176. FIREFIGHTERS EMPLOYED BY CERTAIN LOCAL GOVERNMENTS

8 Sec. 176.001. APPLICABILITY. This chapter does not apply
9 to:

10 (1) a municipality with a population of 10,000 or
11 more; or

12 (2) a county.

13 Sec. 176.002. DEFINITIONS. In this chapter:

14 (1) "Member of a fire department" means an employee of
15 a fire department who is defined as "fire protection personnel" by
16 Section 419.021, Government Code.

17 (2) "Political subdivision" includes:

18 (A) any special district or other local
19 government; and

20 (B) the administrative agency or supervising
21 local government governing a fire department established by two or
22 more governmental entities that have entered an interlocal contract
23 under Chapter 791, Government Code, to obtain fire protection
24 services.

1 Sec. 176.003. PAYROLL DEDUCTIONS. (a) The governing body
2 of a political subdivision may deduct from a member of the fire
3 department's monthly salary or wages an amount requested in writing
4 by the member of the fire department in payment of membership dues
5 to a bona fide employees' association named by the member of the
6 fire department.

7 (b) Participation in the payroll deduction program by a
8 member of the fire department is voluntary.

9 (c) A member of the fire department's written request must:

10 (1) be set out in a form prescribed and provided by the
11 chief financial official of the political subdivision;

12 (2) state the amount to be deducted each month; and

13 (3) direct the chief financial official to transfer
14 the deducted funds to the designated employees' association.

15 (d) The amount deducted each month may not exceed the amount
16 stated in the written request. However, the governing body of a
17 political subdivision may impose and collect an administrative fee
18 from each participating member of the fire department in addition
19 to the membership dues withheld. The fee must be in an amount
20 reasonable and necessary to cover the administrative costs of
21 collecting, accounting for, and disbursing the membership dues.

22 (e) A request under this section remains in effect until the
23 chief financial official receives written notice of revocation in a
24 form prescribed and provided by the chief financial official and
25 filed by the member of the fire department.

26 Sec. 176.004. LONGEVITY PAY. Each member of a fire
27 department of a political subdivision is entitled to receive, in

1 addition to all other money paid for services rendered in the
2 department, longevity pay of \$4 a month for each year of service in
3 the department, not to exceed 25 years.

4 Sec. 176.005. CLASSIFICATION OF POSITIONS; SALARY
5 SCHEDULE. (a) Each political subdivision shall:

6 (1) classify all positions in its fire department; and

7 (2) specify the duties and prescribe the salary for
8 each classification.

9 (b) A member of a fire department who is required to perform
10 the duties of a particular classification is entitled to be paid the
11 salary prescribed for that classification during the time the
12 member performs those duties.

13 Sec. 176.006. PENALTY. (a) An official of a political
14 subdivision who is in charge of the fire department or is
15 responsible for setting the compensation, hours, or other working
16 conditions provided by this chapter commits an offense if the
17 official violates this chapter.

18 (b) An offense under this section is punishable by a fine of
19 not less than \$10 or more than \$100.

20 (c) Each day the official causes or permits a violation of
21 this chapter to occur is a separate offense.

22 Sec. 176.007. VACATION DAYS AND HOLIDAYS OF MEMBERS OF FIRE
23 DEPARTMENT. (a) A member of a fire department in a political
24 subdivision who has been regularly employed by the department for
25 at least one year is entitled to the greater of:

26 (1) 15 vacation days with pay each year; or

27 (2) the same number of vacation days with pay as is

1 granted to other employees of the political subdivision with the
2 same length of service.

3 (b) The department head or the department head's designee
4 shall designate the days during which the member may be on vacation.

5 (c) A member of the fire department is entitled to the same
6 number of paid holidays, or days of paid leave in lieu of holidays,
7 as is granted to other employees of the political subdivision.

8 Sec. 176.008. HOURS OF LABOR AND OVERTIME PAY OF MEMBERS OF
9 FIRE DEPARTMENT. (a) In this section, "work cycle" means the
10 period in a posted work schedule starting at the time the cycle
11 begins and ending at the time the cycle begins to repeat itself. The
12 cycle may span any number of days not less than seven or more than
13 28.

14 (b) A member of a fire department is considered to have
15 worked overtime and is entitled to be compensated for the overtime
16 as provided by Subsection (e) if the member:

17 (1) is not exempt under the federal Fair Labor
18 Standards Act of 1938 (29 U.S.C. Section 201 et seq.), as amended;
19 and

20 (2) is required or permitted to work more than the
21 number of hours that bears the same ratio to 212 hours as the number
22 of days in the work period bears to 28 days.

23 (c) A member of a fire department is considered to have
24 worked overtime and is entitled to be compensated for the overtime
25 as provided by Subsection (e) if the member:

26 (1) does not fight fires or provide emergency medical
27 services, including a member who is a mechanic, clerk,

1 investigator, inspector, fire marshal, fire alarm dispatcher, and
2 maintenance worker;

3 (2) is not exempt under the federal Fair Labor
4 Standards Act of 1938 (29 U.S.C. Section 201 et seq.), as amended;
5 and

6 (3) is required or permitted to average more hours in a
7 week than the number of hours in a normal work week of the majority
8 of the employees of the political subdivision other than
9 firefighters, emergency medical service personnel, and police
10 officers.

11 (d) In determining the number of hours worked by a member of
12 a fire department who is covered by this section and 29 U.S.C.
13 Section 207(k), as amended:

14 (1) all hours are counted during which the member of
15 the fire department is required to remain on call on the employer's
16 premises or so close to the premises that the member cannot use
17 those hours effectively for that member's own purposes;

18 (2) hours during which the member of the fire
19 department is required to leave a telephone number at which the
20 member may be reached or is required to remain accessible by radio
21 or pager are not counted; and

22 (3) vacation, sick time, holidays, time off in lieu of
23 holidays, or compensatory time may be excluded as hours worked.

24 (e) A member of a fire department may be required or
25 permitted to work overtime. A member of a fire department who is
26 not exempt under the federal Fair Labor Standards Act of 1938 (29
27 U.S.C. Section 201 et seq.), as amended, and who is required or

1 permitted to work overtime as provided by Subsection (b) or (c) is
2 entitled to be paid overtime for the excess hours worked without
3 regard to the number of hours worked in any one week of a work cycle.
4 Overtime hours are paid at a rate equal to 1-1/2 times the
5 compensation paid to the member of the fire department for regular
6 hours.

7 (f) Nothing in this section prevents a member of a fire
8 department from working extra hours when exchanging work hours with
9 another member of the fire department with the consent of the
10 department head.

11 Sec. 176.009. PAYMENT FOR COURT APPEARANCES OF
12 FIREFIGHTERS. (a) A political subdivision shall pay a member of a
13 fire department for an appearance as a witness in a criminal case or
14 a civil suit in which the political subdivision is a party in
15 interest if the appearance:

16 (1) is required;

17 (2) is made on time off; and

18 (3) is made by the member in the member's capacity as a
19 member of the fire department.

20 (b) Payment under this section is at the member's regular
21 rate of pay.

22 (c) Payment under this section may be taxed as court costs
23 in civil suits.

24 (d) This section does not reduce or prohibit compensation
25 paid in excess of the regular rate of pay.

26 SECTION 2. Subtitle C, Title 5, Local Government Code, is
27 amended by adding Chapter 177 to read as follows:

1 CHAPTER 177. FIREFIGHTER CIVIL SERVICE

2 FOR CERTAIN LOCAL GOVERNMENTS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 177.001. PURPOSE. (a) The purpose of this chapter is
5 to secure efficient fire departments composed of capable personnel
6 who are free from political influence and who have permanent
7 employment tenure as public servants.

8 (b) The members of the Firefighters' Civil Service
9 Commission shall administer this chapter in accordance with this
10 purpose.

11 Sec. 177.002. ENTITIES AND POLITICAL SUBDIVISIONS COVERED
12 BY CHAPTER. (a) This chapter applies to a fire department:

13 (1) that employs one or more persons who are defined as
14 fire protection personnel by Section 419.021, Government Code;

15 (2) that provides fire protection services to two or
16 more governmental entities that have entered an interlocal contract
17 under Chapter 791, Government Code, to obtain fire protection
18 services; and

19 (3) for which this chapter has been adopted in
20 accordance with Section 177.004.

21 (b) Except as provided by Subsection (c), this chapter
22 applies to a political subdivision that:

23 (1) has a paid fire department; and

24 (2) has adopted this chapter in accordance with
25 Section 177.005.

26 (c) This chapter does not apply to a municipality with a
27 population of 10,000 or more or to a county.

1 Sec. 177.003. DEFINITIONS. In this chapter:

2 (1) "Chief executive" means the chief executive of:

3 (A) the governing body of the administrative
4 agency or supervising local government governing a fire department
5 described by Section 177.002(a); or

6 (B) any special district or other local
7 government described by Section 177.002(b).

8 (2) "Commission" means the Firefighters' Civil Service
9 Commission.

10 (3) "Department head" means the chief or head of a fire
11 department or that person's equivalent, regardless of the name or
12 title used.

13 (4) "Director" means the director of the firefighters'
14 civil service.

15 (5) "Firefighter" means a member of a fire department
16 who was appointed in substantial compliance with this chapter or
17 who is entitled to civil service status under Section 177.006. The
18 term includes members who perform:

19 (A) fire suppression;

20 (B) fire prevention;

21 (C) fire training;

22 (D) fire safety education;

23 (E) fire maintenance;

24 (F) fire communications;

25 (G) fire medical emergency technology;

26 (H) fire photography;

27 (I) fire administration; or

1 (J) fire arson investigation.

2 (6) "Governing body" means the governing body of the
3 administrative agency or supervising local government governing a
4 fire department described in Section 177.002(a), or the governing
5 body for a political subdivision described in Section 177.002(b),
6 as applicable.

7 Sec. 177.004. ELECTION TO ADOPT OR REPEAL CHAPTER: FIRE
8 DEPARTMENT SERVING TWO OR MORE ENTITIES. (a) A fire department to
9 which this chapter applies under Section 177.002(a) may adopt this
10 chapter by majority vote of:

11 (1) its governing body; or

12 (2) the qualified voters in the governmental entities
13 served by the fire department, in accordance with this section.

14 (b) If the governing body of the fire department receives a
15 petition requesting an election that is signed by a number of
16 qualified voters of the affected governmental entities served by
17 the fire department equal to at least 10 percent of the combined
18 total number of voters of the governmental entities who voted in the
19 most recent general election, the governing body shall order an
20 election submitting to the voters of the governmental entities the
21 question of whether this chapter should be adopted. The election
22 must be held on the first authorized uniform election date
23 prescribed by Chapter 41, Election Code, that occurs after the
24 petition is filed and allows sufficient time to comply with other
25 requirements of law.

26 (c) The ballot shall be printed to provide for voting for or
27 against the proposition: "Adoption of the firefighters' civil

1 service law." If a majority of the votes received in the election
2 favor adoption of this chapter, the governing body shall implement
3 this chapter.

4 (d) If an election is held under Subsection (b), a petition
5 for a subsequent election to be held under that subsection may not
6 be filed for at least one year after the date the previous election
7 was held. To be valid, a petition for a subsequent election must
8 contain the signatures of a number of qualified voters of the
9 affected governmental entities equal to at least 20 percent of the
10 combined total number of voters who voted in the most recent general
11 election. Any subsequent election must be held on the first
12 authorized uniform election date prescribed by Chapter 41, Election
13 Code, that occurs after the petition is filed and allows sufficient
14 time to comply with other requirements of law.

15 (e) If the governing body of a fire department described by
16 Subsection (a) that has operated under this chapter for at least one
17 year receives a petition requesting an election to repeal this
18 chapter that is signed by at least 10 percent of the combined number
19 of qualified voters of the affected governmental entities, the
20 governing body shall order an election submitting to the voters the
21 question of whether this chapter should be repealed. If a majority
22 of the qualified voters vote to repeal this chapter, this chapter
23 does not apply to the fire department.

24 Sec. 177.005. ELECTION BY POLITICAL SUBDIVISION WITH PAID
25 FIRE DEPARTMENT TO ADOPT OR REPEAL CHAPTER. (a) A political
26 subdivision to which this chapter applies under Section 177.002(b)
27 may adopt this chapter by majority vote of:

1 (1) its governing body; or

2 (2) the qualified voters in the political subdivision
3 in accordance with this section.

4 (b) If the governing body of the political subdivision
5 receives a petition requesting an election that is signed by a
6 number of qualified voters of the political subdivision equal to at
7 least 10 percent of the number of voters who voted in the most
8 recent general election, the governing body shall order an election
9 submitting to the voters the question of whether this chapter
10 should be adopted. The election must be held on the first
11 authorized uniform election date prescribed by Chapter 41, Election
12 Code, that occurs after the petition is filed and allows sufficient
13 time to comply with other requirements of law.

14 (c) The ballot shall be printed to provide for voting for or
15 against the proposition: "Adoption of the firefighters' civil
16 service law." If a majority of the votes received in the election
17 favor adoption of this chapter, the governing body shall implement
18 this chapter.

19 (d) If an election is held under Subsection (b), a petition
20 for a subsequent election to be held under that subsection may not
21 be filed for at least one year after the date the previous election
22 was held. To be valid, a petition for a subsequent election must
23 contain the signatures of a number of qualified voters of the
24 political subdivision equal to at least 20 percent of the number of
25 voters who voted in the most recent general election. Any
26 subsequent election must be held on the first authorized uniform
27 election date prescribed by Chapter 41, Election Code, that occurs

1 after the petition is filed and allows sufficient time to comply
2 with other requirements of law.

3 (e) If the governing body of a political subdivision that
4 has operated under this chapter for at least one year receives a
5 petition requesting an election to repeal this chapter that is
6 signed by at least 10 percent of the qualified voters of the
7 political subdivision, the governing body shall order an election
8 submitting to the voters the question of whether this chapter
9 should be repealed. If a majority of the qualified voters vote to
10 repeal this chapter, this chapter does not apply in that political
11 subdivision.

12 Sec. 177.006. STATUS OF EMPLOYEES IF CHAPTER ADOPTED. Each
13 firefighter serving in a fire department for which this chapter has
14 been adopted under Section 177.004 or 177.005 has the status of a
15 civil service employee and is not required to take a competitive
16 examination to remain in the position the firefighter occupies at
17 the time of the adoption if the firefighter:

18 (1) has been in the service of the fire department for
19 more than six months at the time this chapter is adopted; and

20 (2) is otherwise entitled to civil service
21 classification.

22 Sec. 177.007. IMPLEMENTATION; COMMISSION. (a) On
23 adoption of this chapter, the Firefighters' Civil Service
24 Commission is established for the fire department. The chief
25 executive shall appoint the members of the commission within 60
26 days after the date this chapter is adopted. Within 30 days after
27 the first day of the first full fiscal year applicable to the fire

1 department that begins after the date of the adoption election, the
2 governing body shall implement this chapter.

3 (b) The commission consists of three members appointed by
4 the chief executive and confirmed by the governing body. Members
5 serve staggered two-year terms with the term of at least one member
6 expiring each year. If a vacancy occurs or if an appointee fails to
7 qualify within 10 days after the date of appointment, the chief
8 executive shall appoint a person to serve for the remainder of the
9 unexpired term in the same manner as the original appointee.

10 (c) A person appointed to the commission must:

11 (1) be of good moral character;

12 (2) be a United States citizen;

13 (3) be a resident of a political subdivision served by
14 the fire department who has resided in the political subdivision
15 for more than three years;

16 (4) be over 25 years of age; and

17 (5) not have held a public office within the preceding
18 three years.

19 (d) In making initial appointments, the chief executive
20 shall designate one member to serve a one-year term and two members
21 to serve two-year terms.

22 (e) Initial members shall elect a presiding officer and an
23 assistant presiding officer within 10 days after the date all
24 members have qualified. Each January, the members shall elect a
25 presiding officer and an assistant presiding officer.

26 (f) The governing body shall provide to the commission
27 adequate and suitable office space in which to conduct business.

1 (g) The chief executive commits an offense if the chief
2 executive knowingly or intentionally fails to appoint the initial
3 members of the commission within the 60-day period prescribed by
4 Subsection (a). An offense under this subsection is a misdemeanor
5 punishable by a fine of not less than \$100 or more than \$200. Each
6 day after the 60-day period that the chief executive knowingly or
7 intentionally fails to make a required appointment constitutes a
8 separate offense.

9 (h) The chief executive or another official of the fire
10 department or a political subdivision commits an offense if the
11 person knowingly or intentionally refuses to implement this chapter
12 or attempts to obstruct the enforcement of this chapter. An offense
13 under this subsection is a misdemeanor punishable by a fine of not
14 less than \$100 or more than \$200.

15 Sec. 177.008. REMOVAL OF COMMISSION MEMBER. (a) If at a
16 meeting held for that purpose the governing body finds that a
17 commission member is guilty of misconduct in office, the governing
18 body may remove the member. The member may request that the meeting
19 be held as an open hearing in accordance with Chapter 551,
20 Government Code.

21 (b) If a commission member is indicted or charged by
22 information with a criminal offense involving moral turpitude, the
23 member is automatically suspended from office until the disposition
24 of the charge. Unless the member pleads guilty or is found to be
25 guilty, the member shall resume office at the time of disposition of
26 the charge.

27 (c) The governing body may appoint a substitute commission

1 member during a period of suspension. If a member pleads guilty to
2 or is found to be guilty of a criminal offense involving moral
3 turpitude, the conviction removes the member from the commission
4 and the governing body shall appoint a replacement commission
5 member to serve the remainder of the disqualified member's term of
6 office.

7 Sec. 177.009. ADOPTION AND PUBLICATION OF RULES. (a) The
8 commission shall adopt rules necessary for the proper conduct of
9 commission business.

10 (b) The commission may not adopt a rule permitting the
11 appointment or employment of a person who is:

12 (1) without good moral character;

13 (2) physically or mentally unfit; or

14 (3) incompetent to discharge the duties of the
15 appointment or employment.

16 (c) The commission shall adopt rules that prescribe cause
17 for removal or suspension of a firefighter. The rules must comply
18 with the grounds for removal prescribed by Section 177.151.

19 (d) The commission shall publish each rule it adopts and
20 each classification and seniority list for the fire department.
21 The rules and lists shall be made available on demand. A rule is
22 considered to be adopted and sufficiently published if the
23 commission adopts the rule by majority vote and reduces the rule to
24 writing. Publication in a newspaper is not required. The governing
25 body may not act on the rule.

26 (e) A rule is not valid and binding on the commission until
27 the commission:

1 (1) mails a copy of the rule to the fire commissioner,
2 if the political subdivision has an elected fire commissioner, and
3 to the department head;

4 (2) posts a copy of the rule for a seven-day period at
5 a conspicuous place in the central fire station; and

6 (3) mails a copy of the rule to each branch fire
7 station.

8 (f) The director shall keep copies of all rules for free
9 distribution to members of the fire department who request copies
10 and for inspection by any interested person.

11 Sec. 177.010. COMMISSION INVESTIGATIONS AND INSPECTIONS.

12 (a) The commission or a commission member designated by the
13 commission may investigate and report on all matters relating to
14 the enforcement and effect of this chapter and any rules adopted
15 under this chapter and shall determine if the chapter and rules are
16 being obeyed.

17 (b) During an investigation, the commission or the
18 commission member may:

19 (1) administer oaths;

20 (2) issue subpoenas to compel the attendance of
21 witnesses and the production of books, papers, documents, and
22 accounts relating to the investigation; and

23 (3) depose witnesses residing inside or outside the
24 state.

25 (c) A deposition taken in connection with an investigation
26 under this section must be taken in the manner prescribed by law for
27 taking a similar deposition in a civil action in federal district

1 court.

2 (d) An oath administered or a subpoena issued under this
3 section has the same force and effect as an oath administered by a
4 magistrate in the magistrate's judicial capacity.

5 (e) A person who fails to respond to a subpoena issued under
6 this section commits an offense punishable as prescribed by Section
7 177.016.

8 Sec. 177.011. COMMISSION APPEAL PROCEDURE. (a) Except as
9 otherwise provided by this chapter, if a firefighter wants to
10 appeal to the commission an action for which an appeal or review is
11 provided by this chapter, the firefighter must file an appeal with
12 the commission within 10 days after the date the action occurred.

13 (b) The appeal must:

14 (1) include the basis for the appeal and a request for
15 a commission hearing; and

16 (2) contain a statement that:

17 (A) denies the truth of the charge as made;

18 (B) takes exception to the legal sufficiency of
19 the charge;

20 (C) alleges the recommended action does not fit
21 the offense or alleged offense; or

22 (D) combines any of the statements in Paragraphs
23 (A)-(C).

24 (c) In each hearing, appeal, or review of any kind in which
25 the commission performs an adjudicatory function, the affected
26 firefighter is entitled to be represented by counsel or a person the
27 firefighter chooses. Each commission proceeding shall be held in

1 public.

2 (d) The commission may issue subpoenas and subpoenas duces
3 tecum for the attendance of witnesses and for the production of
4 documentary material.

5 (e) The affected firefighter may request that the
6 commission subpoena any books, records, documents, papers,
7 accounts, or witnesses that the firefighter considers pertinent to
8 the case. The firefighter must make the request before the 10th day
9 before the date the commission hearing will be held. If the
10 commission does not subpoena the material, the commission shall,
11 before the third day before the date the hearing will be held, make
12 a written report to the firefighter stating the reason the
13 commission will not subpoena the requested material. This report
14 shall be read into the public record of the commission hearing.

15 (f) Witnesses may be placed under the rule at the commission
16 hearing.

17 (g) The commission shall conduct the hearing fairly and
18 impartially as prescribed by this chapter and shall render a just
19 and fair decision. The commission may consider only the evidence
20 submitted at the hearing.

21 (h) The commission shall maintain a public record of each
22 proceeding with copies available at cost.

23 Sec. 177.012. DECISIONS AND RECORDS. (a) Each concurring
24 commission member shall sign a decision issued by the commission.

25 (b) The commission shall keep records of each hearing or
26 case that comes before the commission.

27 (c) Each rule, opinion, directive, decision, or order

1 issued by the commission must be written and is a public record that
2 the commission shall retain on file.

3 Sec. 177.013. DIRECTOR. (a) On adoption of this chapter,
4 the office of Director of Firefighters' Civil Service is
5 established for the fire department. The commission shall appoint
6 the director and may remove the director at any time. The director
7 shall:

8 (1) serve as secretary to the commission; and
9 (2) perform work incidental to the civil service
10 system as required by the commission.

11 (b) A person appointed as director must meet each
12 requirement for appointment to the commission prescribed by Section
13 177.007(c) except the local residency requirement.

14 (c) A person appointed as director may be a commission
15 member, an employee of an affected political subdivision, or
16 another person.

17 (d) The governing body shall determine the salary, if any,
18 to be paid to the director.

19 Sec. 177.014. APPOINTMENT AND REMOVAL OF DEPARTMENT HEAD.

20 (a) Unless elected, each department head is appointed by the chief
21 executive and confirmed by the governing body.

22 (b) A person appointed as head of a fire department must be
23 eligible for certification by the Texas Commission on Fire
24 Protection at the intermediate level or its equivalent as
25 determined by that commission and must have served as a fully paid
26 firefighter for at least five years.

27 (c) Except as provided by Subsection (d), if a person is

1 removed from the position of department head the person shall be
2 reinstated in the department and placed in a position with a rank
3 not lower than that held by the person immediately before
4 appointment as department head. The person retains all rights of
5 seniority in the department.

6 (d) A person serving as department head who is charged with
7 an offense in violation of civil service rules and is dismissed from
8 the civil service or discharged from the person's position as
9 department head has the same rights and privileges to have a hearing
10 before the commission in the same manner and under the same
11 conditions as a classified employee. If the commission finds that
12 the charges are false or unfounded, the person shall immediately be
13 restored to the same classification that the person held before
14 appointment as department head. The person has all the rights and
15 privileges pertaining to the prior position according to seniority
16 and shall be paid the person's full salary for the time of
17 suspension.

18 Sec. 177.015. APPEAL OF COMMISSION DECISION TO DISTRICT
19 COURT. (a) A firefighter who is dissatisfied with any commission
20 decision may file a petition in district court asking that the
21 decision be set aside. The petition must be filed within 10 days
22 after the date the final commission decision:

23 (1) is sent to the firefighter by certified mail; or
24 (2) is personally received by the firefighter or by
25 the firefighter's designee.

26 (b) The district court may grant the appropriate legal or
27 equitable relief necessary to accomplish the purposes of this

1 chapter. The relief may include reinstatement or promotion with
2 back pay if an order of suspension, dismissal, or demotion is set
3 aside.

4 (c) The court may award reasonable attorney's fees to the
5 prevailing party and assess court costs against the nonprevailing
6 party.

7 (d) If the court finds for the firefighter, the court shall
8 order the governing body to ensure that lost wages are paid to the
9 firefighter.

10 Sec. 177.016. PENALTY FOR VIOLATION OF CHAPTER. (a) A
11 person commits an offense if the person violates this chapter.

12 (b) An offense under this section or Section 177.010 is a
13 misdemeanor punishable by a fine of not less than \$10 or more than
14 \$100, confinement in the county jail for not more than 30 days, or
15 both the fine and confinement.

16 [Sections 177.017-177.050 reserved for expansion]

17 SUBCHAPTER B. CLASSIFICATION AND APPOINTMENT

18 Sec. 177.051. CLASSIFICATION; EXAMINATION REQUIREMENT.

19 (a) The commission shall provide for the classification of all
20 firefighters. The governing body shall:

21 (1) establish the classifications; and

22 (2) prescribe the number of positions in each
23 classification.

24 (b) Except for the department head, each firefighter is
25 classified as prescribed by this subchapter and has civil service
26 protection. The failure of the governing body to establish a
27 position does not result in the loss of civil service benefits by a

1 person entitled to civil service protection or appointed to the
2 position in substantial compliance with this chapter.

3 (c) Except as provided by Section 177.014, an existing
4 position or classification or a position or classification created
5 in the future either by name or by increase in salary may be filled
6 only from an eligibility list that results from an examination held
7 in accordance with this chapter.

8 Sec. 177.052. PHYSICAL REQUIREMENTS AND EXAMINATIONS. (a)
9 The commission shall set the age and physical requirements for
10 applicants for beginning and promotional positions in accordance
11 with this chapter. The requirements must be the same for all
12 applicants.

13 (b) The commission shall require each applicant for a
14 beginning or a promotional position to take an appropriate physical
15 examination. The commission may require each applicant for a
16 beginning position to take a mental examination. The examination
17 shall be administered by a physician, psychiatrist, or
18 psychologist, as appropriate, appointed by the commission. The
19 fire department shall pay for each examination.

20 (c) If an applicant is rejected by the physician,
21 psychiatrist, or psychologist, as appropriate, the applicant may
22 request another examination by a board of three physicians,
23 psychiatrists, or psychologists, as appropriate, appointed by the
24 commission. The applicant must pay for the board examination. The
25 board's decision is final.

26 Sec. 177.053. ELIGIBILITY FOR BEGINNING POSITION. (a) A
27 person may not take an entrance examination for a beginning

1 position in the fire department unless the person is at least 18
2 years of age.

3 (b) An applicant may not be certified as eligible for a
4 beginning position with a fire department unless the applicant
5 meets all legal requirements necessary to become eligible for
6 future certification by the Texas Commission on Fire Protection.

7 (c) Each firefighter affected by this chapter must be able
8 to read and write English.

9 Sec. 177.054. ENTRANCE EXAMINATION NOTICE. (a) Before the
10 10th day before the date an entrance examination is held, the
11 commission shall post a notice of the examination in plain view on a
12 bulletin board located in the main lobby of the governing body's
13 offices and in the commission's office. The notice must show the
14 position to be filled or for which the examination is to be held and
15 the date, time, and place of the examination.

16 (b) The notice required by Subsection (a) must also state
17 the period during which the eligibility list created as a result of
18 the examination will be effective.

19 Sec. 177.055. ENTRANCE EXAMINATIONS. (a) The commission
20 shall provide for open, competitive, and free entrance examinations
21 to provide eligibility lists for beginning positions in the fire
22 department. The examinations are open to each person who makes a
23 proper application and meets the requirements prescribed by this
24 chapter.

25 (b) An eligibility list for a beginning position in the fire
26 department may be created only as a result of a competitive
27 examination held in the presence of each applicant for the

1 position, except as provided by Subsection (d). The examination
2 must be based on the applicant's knowledge of and qualifications
3 for fire fighting and work in the fire department and must inquire
4 into the applicant's general education and mental ability. A
5 person may not be appointed to the fire department except as a
6 result of the examination.

7 (c) An applicant may not take an examination unless at least
8 one other applicant taking the examination is present.

9 (d) Examinations for beginning positions in the fire
10 department may be held at different locations if each applicant
11 takes the same examination and is examined in the presence of other
12 applicants.

13 (e) An additional five points shall be added to the
14 examination grade of an applicant who served in the United States
15 armed forces, received an honorable discharge, and made a passing
16 grade on the examination.

17 (f) An applicant may not take the examination for a
18 particular eligibility list more than once.

19 (g) The commission shall:

20 (1) keep each eligibility list for a beginning
21 position in effect for a period of not less than six months or more
22 than 12 months, unless the names of all applicants on the list have
23 been referred to the fire department;

24 (2) determine the length of the period; and

25 (3) give new examinations at times the commission
26 considers necessary to provide required staffing.

27 (h) The grade to be placed on the eligibility list for each

1 applicant shall be computed by adding an applicant's points under
2 Subsection (e), if any, to the applicant's grade on the written
3 examination. Each applicant's grade on the written examination is
4 based on a maximum grade of 100 points and is determined entirely by
5 the correctness of the applicant's answers to the questions. The
6 minimum passing grade on the examination is 70 points. An applicant
7 must pass the examination to be placed on an eligibility list.

8 Sec. 177.056. PROCEDURE FOR FILLING BEGINNING POSITIONS.

9 (a) When a vacancy occurs in a beginning position in a fire
10 department, the department head shall request in writing from the
11 commission the names of suitable persons from the eligibility list.
12 The director shall certify to the chief executive the names of the
13 three persons having the highest grades on the eligibility list.

14 (b) From the three names certified, the chief executive
15 shall appoint the person having the highest grade unless there is a
16 valid reason why the person having the second or third highest grade
17 should be appointed.

18 (c) If the chief executive does not appoint the person
19 having the highest grade, the chief executive shall clearly set
20 forth in writing a good and sufficient reason why the person having
21 the highest grade was not appointed.

22 (d) The reason required by Subsection (c) shall be filed
23 with the commission and a copy provided to the person having the
24 highest grade. If the chief executive appoints the person having
25 the third highest grade, a copy of the report shall also be
26 furnished to the person having the second highest grade.

27 Sec. 177.057. PROBATIONARY PERIOD. (a) A person appointed

1 to a beginning position in the fire department must serve a
2 probationary period of one year beginning on that person's date of
3 employment as a firefighter.

4 (b) During a firefighter's probationary period, the
5 department head shall discharge the firefighter and remove the
6 firefighter from the payroll if the firefighter's appointment was
7 not regular or was not made in accordance with this chapter or
8 commission rules.

9 (c) During a firefighter's probationary period, the
10 firefighter may not be prohibited from joining or required to join
11 an employee organization. Joining or not joining an employee
12 organization is not a ground for retaining or not retaining a
13 firefighter serving a probationary period.

14 (d) A firefighter who was appointed in substantial
15 compliance with this chapter and who serves the entire probationary
16 period automatically becomes a civil service employee with full
17 civil service protection.

18 Sec. 177.058. CERTAIN ELIGIBILITY PROVISIONS RELATING TO
19 PROMOTION. (a) A firefighter is not eligible for promotion to the
20 rank of captain or its equivalent unless the person has at least
21 four years' actual service in that fire department.

22 (b) If a person is recalled to active military duty for not
23 more than 24 months, the two-year service requirements prescribed
24 by Section 177.060 do not apply and the person is entitled to have
25 time spent on active military duty considered as duty in the fire
26 department. If the active military duty exceeds 12 months, the
27 person on return must serve in the department for 90 days before the

1 person is eligible to participate in a promotional examination.
2 This time is considered necessary to bring the person up to date on
3 equipment and techniques.

4 Sec. 177.059. PROMOTIONAL EXAMINATION NOTICE. (a) Before
5 the 90th day before the date a promotional examination is held, the
6 commission shall post a notice that lists the sources from which the
7 examination questions will be taken.

8 (b) Before the 30th day before the date a promotional
9 examination is held, the commission shall post a notice of the
10 examination in plain view on a bulletin board located in the main
11 lobby of the administrative offices of the governing body and in the
12 commission's office. The notice must show the position to be filled
13 or for which the examination is to be held and the date, time, and
14 place of the examination. The commission shall also furnish
15 sufficient copies of the notice for posting in the stations or
16 subdepartments in which the position will be filled.

17 (c) The notice required by Subsection (b) may also include
18 the name of each source used for the examination, the number of
19 questions taken from each source, and the chapter used in each
20 source.

21 Sec. 177.060. ELIGIBILITY FOR FIRE DEPARTMENT PROMOTIONAL
22 EXAMINATION. (a) Each promotional examination is open to each
23 firefighter who at any time has continuously held for at least two
24 years a position in the classification that is immediately below,
25 in salary, the classification for which the examination is to be
26 held.

27 (b) If the department has adopted a classification plan that

1 classifies positions on the basis of similarity in duties and
2 responsibilities, each promotional examination is open to each
3 firefighter who has continuously held for at least two years a
4 position at the next lower pay grade, if it exists, in the
5 classification for which the examination is to be held.

6 (c) If there are not enough firefighters in the next lower
7 position with two years' service in that position to provide an
8 adequate number of persons to take the examination, the commission
9 may open the examination to persons in that position with less than
10 two years' service. If there is still an insufficient number, the
11 commission may open the examination to persons with at least two
12 years' experience in the second lower position, in salary, to the
13 position for which the examination is to be held.

14 (d) A firefighter who previously terminated the
15 firefighter's employment with the department and is subsequently
16 reemployed by the same department must again meet the two-year
17 service requirement for eligibility to take a promotional
18 examination. In determining if a firefighter has met the two-year
19 service requirement, a fire department may not consider service in
20 another fire department.

21 (e) This section does not prohibit lateral crossover
22 between classes.

23 Sec. 177.061. PROMOTIONAL EXAMINATION PROCEDURE. (a) The
24 commission shall adopt rules governing promotions and shall hold
25 promotional examinations to provide eligibility lists for each
26 classification in the fire department. The examinations shall be
27 held substantially as prescribed by this section.

1 (b) Each eligible promotional candidate shall be given an
2 identical examination in the presence of the other eligible
3 promotional candidates.

4 (c) The examination must be entirely in writing and may not
5 in any part consist of an oral interview.

6 (d) The examination questions must test the knowledge of the
7 eligible promotional candidates about information and facts and
8 must be based on:

9 (1) the duties of the position for which the
10 examination is held;

11 (2) material that is of reasonably current publication
12 and that has been made reasonably available to each member of the
13 fire department involved in the examination; and

14 (3) any study course given by the departmental school
15 of instruction.

16 (e) The examination questions must be taken from the sources
17 posted as prescribed by Section 177.059(a). Firefighters may
18 suggest source materials for the examinations.

19 (f) The examination questions must be prepared and composed
20 so that the grading of the examination can be promptly completed
21 immediately after the examination is over.

22 (g) The director is responsible for the preparation and
23 security of each promotional examination. The fairness of the
24 competitive promotional examination is the responsibility of the
25 commission, the director, and each employee involved in the
26 preparation or administration of the examination.

27 (h) A person commits an offense if the person knowingly or

1 intentionally:

2 (1) reveals a part of a promotional examination to an
3 unauthorized person; or

4 (2) receives from any person a part of a promotional
5 examination for unfair personal gain or advantage.

6 (i) An offense under Subsection (h) is a misdemeanor
7 punishable by a fine of not less than \$1,000, confinement in the
8 county jail for not more than one year, or both the fine and
9 confinement.

10 Sec. 177.062. PROMOTIONAL EXAMINATION GRADES. (a) The
11 grading of each promotional examination shall begin when one
12 eligible promotional candidate completes the examination. As the
13 eligible promotional candidates finish the examination, the
14 examinations shall be graded at the examination location and in the
15 presence of any candidate who wants to remain during the grading.

16 (b) Each firefighter is entitled to receive one point for
17 each year of seniority in that department, with a maximum of 10
18 points possible.

19 (c) The grade that must be placed on the eligibility list
20 for each firefighter shall be computed by adding the applicant's
21 points for seniority to the applicant's grade on the written
22 examination. Each applicant's grade on the written examination is
23 based on a maximum grade of 100 points and is determined entirely by
24 the correctness of the applicant's answers to the questions. All
25 applicants who receive a grade of at least 70 points shall be
26 determined to have passed the examination. If a tie score occurs,
27 the commission shall determine a method to break the tie.

1 (d) Within 24 hours after a promotional examination is held,
2 the commission shall post the individual raw test scores on a
3 bulletin board located in the main lobby of the governing body's
4 offices.

5 Sec. 177.063. REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION.

6 (a) On request, each eligible promotional candidate from the fire
7 department is entitled to examine the person's promotional
8 examination and answers, the examination grading, and the source
9 material for the examination. If dissatisfied, the candidate may
10 appeal, within five business days, to the commission for review in
11 accordance with this chapter. In computing this period, a
12 Saturday, Sunday, or legal holiday is not considered a business
13 day.

14 (b) The eligible promotional candidate may not remove the
15 examination or copy a question used in the examination.

16 Sec. 177.064. PROCEDURE FOR MAKING PROMOTIONAL
17 APPOINTMENTS. (a) When a vacancy occurs in a nonentry position, the
18 vacancy shall be filled as prescribed by this section.

19 (b) If an eligibility list for the position to be filled
20 exists on the date the vacancy occurs, the director, on request by
21 the department head, shall certify to the department head the names
22 of the three persons having the highest grades on that eligibility
23 list. The director shall certify the names within 10 days after the
24 date the director is notified of the vacancy. If fewer than three
25 names remain on the eligibility list or if only one or two eligible
26 promotional candidates passed the promotional examination, each
27 name on the list must be submitted to the department head.

1 (c) The director shall submit names from an existing
2 eligibility list to the department head until the vacancy is filled
3 or the list is exhausted.

4 (d) If an eligibility list does not exist on the date a
5 vacancy occurs or a new position is created, the commission shall
6 hold an examination to create a new eligibility list within 90 days
7 after the date the vacancy occurs or a new position is created.

8 (e) If an eligibility list exists on the date a vacancy
9 occurs, the department head shall fill the vacancy by permanent
10 appointment from the names on the eligibility list furnished by the
11 director within 60 days after the date the vacancy occurs. If an
12 eligibility list does not exist, the department head shall fill the
13 vacancy by permanent appointment from names on an eligibility list
14 that the commission shall provide within 90 days after the date the
15 vacancy occurs.

16 (f) Unless the department head has a valid reason for not
17 appointing the person, the department head shall appoint the
18 eligible promotional candidate having the highest grade on the
19 eligibility list.

20 (g) A department head that has a valid reason for not
21 appointing the eligible promotional candidate having the highest
22 grade shall personally discuss the reason with the person being
23 bypassed before appointing another person. The department head
24 shall also file the reason in writing with the commission. On
25 application of the bypassed eligible promotional candidate, the
26 reason the department head did not appoint that person is subject to
27 review by the commission.

1 (h) If a person is bypassed, the person's name is returned
2 to its place on the eligibility list and shall be resubmitted to the
3 department head if a vacancy occurs.

4 (i) A person's name shall be removed from the eligibility
5 list if:

6 (1) the department head:

7 (A) refuses three times to appoint the person;

8 and

9 (B) files the reasons for the refusals in writing
10 with the commission; and

11 (2) the commission does not set aside the refusals.

12 (j) Each promotional eligibility list remains in existence
13 for one year after the date on which the written examination is
14 given, unless exhausted. At the expiration of the one-year period,
15 the eligibility list expires and a new examination may be held.

16 Sec. 177.065. RECORD OF CERTIFICATION AND APPOINTMENT. (a)
17 When a person is certified and appointed to a position in the fire
18 department, the director shall:

19 (1) forward the appointed person's record to the
20 department head;

21 (2) forward a copy of the record to the chief
22 executive; and

23 (3) retain a copy in the civil service files.

24 (b) The record must contain:

25 (1) the date notice of examination for the position
26 was posted;

27 (2) the date the appointed person took the

1 examination;

2 (3) the name of each person who conducted the
3 examination;

4 (4) the relative position of the appointed person on
5 the eligibility list;

6 (5) the date the appointed person took the physical
7 examination, the name of the examining physician, and whether the
8 person was accepted or rejected;

9 (6) the date the request to fill the vacancy was made;

10 (7) the date the appointed person was notified to
11 report for duty; and

12 (8) the date the appointed person's pay is to start.

13 (c) If the director intentionally fails to comply with this
14 section, the commission shall immediately remove the director from
15 office.

16 (d) The director's failure to comply with this section does
17 not affect the civil service status of an employee.

18 Sec. 177.066. TEMPORARY DUTIES IN HIGHER CLASSIFICATION.

19 (a) The department head may designate a person from the next lower
20 classification to temporarily fill a position in a higher
21 classification.

22 (b) A person designated under Subsection (a) is entitled to
23 the base salary of the higher position plus the person's own
24 longevity or seniority pay, educational incentive pay, and
25 certification pay during the time the person performs the duties.

26 (c) The temporary performance of the duties of a higher
27 position by a person who has not been promoted as prescribed by this

1 chapter may not be construed as a promotion.

2 [Sections 177.067-177.100 reserved for expansion]

3 SUBCHAPTER C. COMPENSATION

4 Sec. 177.101. SALARY. (a) Except as provided by Section
5 177.066, all firefighters in the same classification are entitled
6 to the same base salary.

7 (b) In addition to the base salary, each firefighter is
8 entitled to each of the following types of pay, if applicable:

9 (1) longevity or seniority pay;

10 (2) educational incentive pay as authorized by Section
11 177.103;

12 (3) assignment pay as authorized by Section 177.102;
13 and

14 (4) certification pay as authorized by Section
15 177.103.

16 Sec. 177.102. ASSIGNMENT PAY. (a) A governing body may
17 authorize assignment pay for firefighters who perform specialized
18 functions.

19 (b) The assignment pay is in an amount and is payable under
20 conditions set by enactment of the governing body and is in addition
21 to the regular pay received by members of the fire department.

22 (c) If the enactment applies equally to each person who
23 meets the criteria established by the enactment, the enactment may:

24 (1) provide for payment to each firefighter who meets
25 training or education criteria for an assignment; or

26 (2) set criteria that provide for payment only to a
27 firefighter in a special assignment.

1 (d) The head of the fire department is not eligible for the
2 assignment pay authorized by this section.

3 Sec. 177.103. CERTIFICATION AND EDUCATIONAL INCENTIVE PAY.

4 (a) If each firefighter in a political subdivision is afforded an
5 opportunity to qualify for certification, the governing body may
6 authorize certification pay to those firefighters who meet the
7 requirements for certification set by the Texas Commission on Fire
8 Protection.

9 (b) If the criteria for educational incentive pay are
10 clearly established, in writing, and are applied equally to each
11 firefighter who meets the criteria, the governing body may
12 authorize educational incentive pay for each firefighter who has
13 successfully completed courses at an accredited college or
14 university.

15 (c) The certification pay and educational incentive pay are
16 in addition to a firefighter's regular pay.

17 Sec. 177.104. ACCUMULATION AND PAYMENT OF SICK
18 LEAVE. (a) A permanent or temporary firefighter is allowed sick
19 leave with pay accumulated at the rate of 1-1/4 full working days
20 for each full month employed in a calendar year for a total of 15
21 working days to a person's credit each 12 months.

22 (b) A firefighter may accumulate sick leave without limit
23 and may use the leave if unable to work because of a bona fide
24 illness. If an ill firefighter exhausts the sick leave and can
25 conclusively prove that the illness was incurred in the performance
26 of duties, an extension of sick leave shall be granted.

27 (c) A firefighter who leaves the classified service for any

1 reason is entitled to receive in a lump-sum payment the full amount
2 of the person's salary for accumulated sick leave if the person has
3 accumulated not more than 90 days of sick leave. If a firefighter
4 has accumulated more than 90 days of sick leave, the person's
5 employer may limit payment to the amount that the person would have
6 received if the person had been allowed to use 90 days of
7 accumulated sick leave during the last six months of employment.
8 The lump-sum payment is computed by compensating the person for the
9 accumulated time at the highest permanent pay classification for
10 which the person was eligible during the last six months of
11 employment. The person is paid for the same period for which the
12 person would have been paid if the person had taken the sick leave
13 but does not include additional holidays and any sick leave or
14 vacation time that the person might have accrued during the 90 days.

15 (d) To facilitate the settlement of the accounts of deceased
16 firefighters, all unpaid compensation, including all accumulated
17 sick leave, due at the time of death to an active firefighter who
18 dies as a result of a line-of-duty injury or illness shall be paid
19 to the persons in the first applicable category in the following
20 order of priority:

21 (1) to the beneficiary or beneficiaries the
22 firefighter designated in writing to receive the compensation and
23 filed with the commission before the firefighter's death;

24 (2) to the firefighter's widow or widower;

25 (3) to the firefighter's child or children and to the
26 descendants of a deceased child, by representation;

27 (4) to the firefighter's parents or to their

1 survivors; or

2 (5) to the properly appointed legal representative of
3 the firefighter's estate, or in the absence of a representative, to
4 the person determined to be entitled to the payment under the law of
5 descent and distribution.

6 (e) Payment of compensation to a person in a category in
7 accordance with Subsection (d) is a bar to recovery by a person in
8 another category.

9 Sec. 177.105. VACATIONS. (a) Each firefighter is entitled
10 to earn a minimum of 15 working days' vacation leave with pay in
11 each year.

12 (b) In computing the length of time a firefighter may be
13 absent from work on vacation leave, only those calendar days during
14 which the person would be required to work if not on vacation may be
15 counted as vacation days.

16 (c) Unless approved by the governing body, a firefighter may
17 not accumulate vacation leave from year to year.

18 [Sections 177.106-177.150 reserved for expansion]

19 SUBCHAPTER D. DISCIPLINARY ACTIONS

20 Sec. 177.151. CAUSE FOR REMOVAL OR SUSPENSION. A
21 commission rule prescribing cause for removal or suspension of a
22 firefighter is not valid unless it involves one or more of the
23 following grounds:

24 (1) conviction of a felony or other crime involving
25 moral turpitude;

26 (2) acts of incompetency;

27 (3) neglect of duty;

1 (4) discourtesy to the public or to a fellow employee
2 while the firefighter is in the line of duty;

3 (5) acts showing lack of good moral character;

4 (6) drinking intoxicants while on duty or intoxication
5 while off duty;

6 (7) conduct prejudicial to good order;

7 (8) refusal or neglect to pay just debts;

8 (9) absence without leave;

9 (10) shirking duty or cowardice at fires, if
10 applicable; or

11 (11) violation of an applicable fire rule or special
12 order.

13 Sec. 177.152. DISCIPLINARY SUSPENSIONS. (a) The head of
14 the fire department may suspend a firefighter under the department
15 head's supervision or jurisdiction for the violation of a civil
16 service rule. The suspension may be for a reasonable period not to
17 exceed 15 calendar days or for an indefinite period. An indefinite
18 suspension is equivalent to dismissal from the department.

19 (b) If the department head suspends a firefighter, the
20 department head shall:

21 (1) file a written statement with the commission
22 giving the reasons for the suspension within 120 hours after the
23 hour of suspension; and

24 (2) immediately deliver a copy of the statement in
25 person to the suspended firefighter.

26 (c) The copy of the written statement must inform the
27 suspended firefighter that if the person wants to appeal to the

1 commission, the person must file a written appeal with the
2 commission within 10 days after the date the person receives the
3 copy of the statement.

4 (d) The written statement filed by the department head with
5 the commission must point out each civil service rule alleged to
6 have been violated by the suspended firefighter and must describe
7 the alleged acts of the person that the department head contends are
8 in violation of the civil service rules. It is not sufficient for
9 the department head merely to refer to the provisions of the rules
10 alleged to have been violated.

11 (e) If the department head does not specifically point out
12 in the written statement the act or acts of the firefighter that
13 allegedly violated the civil service rules, the commission shall
14 promptly reinstate the person.

15 (f) If offered by the department head, the firefighter may
16 agree in writing to voluntarily accept, with no right of appeal, a
17 suspension of 16 to 90 calendar days for the violation of a civil
18 service rule. The firefighter must accept the offer within five
19 working days after the date the offer is made. If the person
20 refuses the offer and wants to appeal to the commission, the person
21 must file a written appeal with the commission within 15 days after
22 the date the person receives the copy of the written statement of
23 suspension.

24 (g) In the original written statement and charges and in any
25 hearing conducted under this chapter, the department head may not
26 complain of an act that occurred earlier than the 180th day
27 preceding the date the department head suspends the firefighter. If

1 the act is allegedly related to criminal activity, including the
2 violation of a federal, state, or local law for which the
3 firefighter is subject to a criminal penalty, the department head:

4 (1) may not complain of an act that is discovered
5 earlier than the 180th day preceding the date the department head
6 suspends the firefighter; and

7 (2) must allege that the act complained of is related
8 to criminal activity.

9 Sec. 177.153. APPEAL OF DISCIPLINARY SUSPENSION. (a) If a
10 suspended firefighter appeals the suspension to the commission, the
11 commission shall hold a hearing and render a decision in writing
12 within 30 days after the date it receives notice of appeal. The
13 suspended person and the commission may agree to postpone the
14 hearing for a definite period.

15 (b) In a hearing conducted under this section, the
16 department head is restricted to the department head's original
17 written statement and charges, which may not be amended.

18 (c) The commission may deliberate the decision in closed
19 session but may not consider evidence that was not presented at the
20 hearing. The commission shall vote in open session.

21 (d) In its decision, the commission shall state whether the
22 suspended firefighter is:

- 23 (1) permanently dismissed from the fire department;
24 (2) temporarily suspended from the department; or
25 (3) restored to the person's former position or status
26 in the department's classified service.

27 (e) If the commission finds that the period of disciplinary

1 suspension should be reduced, the commission may order a reduction
2 in the period of suspension. If the suspended firefighter is
3 restored to the position or class of service from which the person
4 was suspended, the firefighter is entitled to:

5 (1) full compensation for the actual time lost as a
6 result of the suspension at the rate of pay provided for the
7 position or class of service from which the person was suspended;
8 and

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

12 (f) Standard payroll deductions, if any, for retirement and
13 other benefits restored as provided by Subsection (c) shall be made
14 from the compensation paid, and the political subdivision or
15 subdivisions shall make the standard corresponding contributions,
16 if any, to the retirement system or other applicable benefit
17 systems.

18 (g) The commission may suspend or dismiss a firefighter only
19 for violation of civil service rules and only after a finding by the
20 commission of the truth of specific charges against the
21 firefighter.

22 Sec. 177.154. DEMOTIONS. (a) If the head of the fire
23 department wants a firefighter under the department head's
24 supervision or jurisdiction to be involuntarily demoted, the
25 department head may recommend in writing to the commission that the
26 commission demote the firefighter.

27 (b) The department head must:

1 (1) include in the recommendation for demotion the
2 reasons the department head recommends the demotion and a request
3 that the commission order the demotion; and

4 (2) immediately furnish a copy of the recommendation
5 in person to the affected firefighter.

6 (c) The commission may refuse to grant the request for
7 demotion. If the commission believes that probable cause exists for
8 ordering the demotion, the commission shall give the firefighter
9 written notice to appear before the commission for a public hearing
10 at a time and place specified in the notice. The commission shall
11 give the notice before the 10th day before the date the hearing will
12 be held.

13 (d) The firefighter is entitled to a full and complete
14 public hearing, and the commission may not demote a firefighter
15 without that public hearing.

16 (e) A voluntary demotion in which the firefighter has
17 accepted the terms of the demotion in writing is not subject to this
18 section.

19 Sec. 177.155. PROCEDURES AFTER FELONY INDICTMENT OR
20 MISDEMEANOR COMPLAINT. (a) If a firefighter is indicted for a
21 felony or officially charged with the commission of a Class A or B
22 misdemeanor, the department head may temporarily suspend the person
23 with or without pay for a period not to extend past the 30th day
24 after the date of final disposition of the specified felony
25 indictment or misdemeanor complaint.

26 (b) The department head shall notify the suspended
27 firefighter in writing that:

1 (1) the person is being temporarily suspended for a
2 specific period with or without pay; and

3 (2) the temporary suspension is not intended to
4 reflect an opinion on the merits of the indictment or complaint.

5 (c) If the act directly related to the felony indictment or
6 misdemeanor complaint occurred or was discovered on or after the
7 180th day before the date of the indictment or complaint, the
8 department head may, within 30 days after the date of final
9 disposition of the indictment or complaint, bring a charge against
10 the firefighter for a violation of civil service rules.

11 (d) A firefighter indicted for a felony or officially
12 charged with the commission of a Class A or B misdemeanor who has
13 also been charged by the department head with civil service
14 violations directly related to the indictment or complaint may
15 delay the civil service hearing until not later than the 30th day
16 after the date of the final disposition of the indictment or
17 complaint.

18 (e) If the department head temporarily suspends a
19 firefighter under this section and the firefighter is not found
20 guilty of the criminal charge, the firefighter may appeal to the
21 commission or to a hearing examiner for recovery of back pay. The
22 commission or hearing examiner may award all or part of the back pay
23 or reject the appeal.

24 (f) Acquittal or dismissal of an indictment or a complaint
25 does not mean that a firefighter has not violated civil service
26 rules and does not negate the charges that may have been or may be
27 brought against the firefighter by the department head.

1 (g) Conviction of a felony is cause for indefinite
2 suspension, and conviction of a Class A or B misdemeanor may be
3 cause for disciplinary action or indefinite suspension.

4 (h) The department head may, after the 180-day period
5 following the date of the discovery of the act by the department,
6 order an indefinite suspension based on an act classified as a
7 felony or a Class A or B misdemeanor if the department head
8 considers delay to be necessary to protect a criminal investigation
9 of the person's conduct. If the department head intends to order an
10 indefinite suspension after the 180-day period, the department head
11 must file with the attorney general a statement describing the
12 criminal investigation and its objectives within 180 days after the
13 date the act complained of occurred.

14 Sec. 177.156. HEARING EXAMINERS. (a) In addition to the
15 other notice requirements prescribed by this chapter, the letter of
16 disciplinary action issued to a firefighter must state that:

17 (1) in an appeal of an indefinite suspension, a
18 suspension, a promotional passover, or a recommended demotion, the
19 appealing firefighter may elect to appeal to an independent third
20 party hearing examiner instead of to the commission; and

21 (2) if the firefighter elects to appeal to a hearing
22 examiner, the person waives all rights to appeal to a district court
23 except as provided by Subsection (j).

24 (b) To exercise the choice of appealing to a hearing
25 examiner, the appealing firefighter must submit to the director a
26 written request as part of the original notice of appeal required
27 under this chapter stating the person's decision to appeal to an

1 independent third party hearing examiner.

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

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

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

1 (f) In each hearing conducted under this section, the
2 hearing examiner has the same duties and powers as the commission,
3 including the right to issue subpoenas.

4 (g) In a hearing conducted under this section, the parties
5 may agree to an expedited hearing procedure. Unless otherwise
6 agreed by the parties, in an expedited procedure, the hearing
7 examiner shall render a decision on the appeal within 10 days after
8 the date the hearing ends.

9 (h) In an appeal that does not involve an expedited hearing
10 procedure, the hearing examiner shall make a reasonable effort to
11 render a decision on the appeal within 30 days after the date the
12 hearing ends or the briefs are filed. The hearing examiner's
13 inability to meet the time requirements imposed by this section
14 does not affect the hearing examiner's jurisdiction, the validity
15 of the disciplinary action, or the hearing examiner's final
16 decision.

17 (i) The hearing examiner's fees and expenses are shared
18 equally by the appealing firefighter and the department. The costs
19 of a witness are paid by the party who calls the witness.

20 (j) A district court may hear an appeal of a hearing
21 examiner's award only on the grounds that the hearing examiner was
22 without jurisdiction or exceeded the hearing examiner's
23 jurisdiction or that the order was procured by fraud, collusion, or
24 other unlawful means. An appeal must be brought in the district
25 court having jurisdiction in a political subdivision served by the
26 fire department.

27 [Sections 177.157-177.200 reserved for expansion]

1 SUBCHAPTER E. LEAVES OF ABSENCE

2 Sec. 177.201. LEAVES OF ABSENCE; RESTRICTION PROHIBITED.

3 (a) If a sufficient number of firefighters are available to perform
4 the normal functions of the fire department, a firefighter may not
5 be refused a reasonable leave of absence without pay to attend a
6 fire school, convention, or meeting if the purpose of the school,
7 convention, or meeting is to secure a more efficient department or
8 better working conditions for department personnel.

9 (b) A rule that affects a firefighter's constitutional
10 right to appear before or to petition the legislature may not be
11 adopted.

12 Sec. 177.202. MILITARY LEAVE OF ABSENCE. (a) On written
13 application of a firefighter, the commission shall grant the person
14 a military leave of absence without pay to enable the person to
15 enter a branch of the United States military service. The leave of
16 absence may not exceed the period of compulsory military service or
17 the basic minimum enlistment period for the branch of service the
18 firefighter enters.

19 (b) The commission shall grant to a firefighter a leave of
20 absence for initial training or annual duty in the armed forces
21 reserves or the National Guard.

22 (c) While a firefighter who received a military leave of
23 absence serves in the military, the commission shall fill the
24 person's position in the department in accordance with this
25 chapter. The firefighter who fills the position is subject to
26 replacement by the person who received the military leave at the
27 time the person returns to active duty in the department.

1 (d) On termination of active military service, a
2 firefighter who received a military leave of absence under this
3 section is entitled to be reinstated to the position that the person
4 held in the department at the time the leave of absence was granted
5 if the person:

6 (1) receives an honorable discharge;

7 (2) remains physically and mentally fit to discharge
8 the duties of that position; and

9 (3) makes an application for reinstatement within 90
10 days after the date the person is discharged from military service.

11 (e) On reinstatement, the firefighter shall receive full
12 seniority credit for the time spent in the military service.

13 (f) If the reinstatement of a firefighter who received a
14 military leave of absence causes that person's replacement to be
15 returned to a lower position in grade or compensation, the replaced
16 person has a preferential right to a subsequent appointment or
17 promotion to the same or a similar position from which the person
18 was demoted. This preferential right has priority over an
19 eligibility list and is subject to the replaced person remaining
20 physically and mentally fit to discharge the duties of that
21 position.

22 Sec. 177.203. LEAVE OF ABSENCE FOR LINE-OF-DUTY ILLNESS OR
23 INJURY. (a) A fire department shall provide to a firefighter a
24 leave of absence for an illness or injury related to the person's
25 line of duty. The leave is with full pay for a period commensurate
26 with the nature of the illness or injury. If necessary, the leave
27 shall continue for at least one year.

1 (b) At the end of the one-year period, the governing body
2 may extend the line-of-duty illness or injury leave at full or
3 reduced pay. If the firefighter's salary is reduced below 60
4 percent of the person's regular monthly salary and the fire
5 department has or participates in a pension fund, the person may
6 retire on pension until able to return to duty.

7 (c) If pension benefits are not available to a firefighter
8 who is temporarily disabled by a line-of-duty injury or illness and
9 if the year at full pay and any extensions granted by the governing
10 body have expired, the firefighter may use accumulated sick leave,
11 vacation time, and other accrued benefits before the person is
12 placed on temporary leave.

13 (d) If a firefighter is temporarily disabled by an injury or
14 illness that is not related to the person's line of duty, the person
15 may use all sick leave, vacation time, and other accumulated time
16 before the person is placed on temporary leave.

17 (e) After recovery from a temporary disability, a
18 firefighter shall be reinstated at the same rank and with the same
19 seniority the person had before going on temporary leave. Another
20 firefighter may voluntarily do the work of an injured firefighter
21 until the person returns to duty.

22 Sec. 177.204. REAPPOINTMENT AFTER RECOVERY FROM
23 DISABILITY. With the commission's approval and if otherwise
24 qualified, a firefighter who has been certified by a physician
25 selected by the person's pension fund as having recovered from a
26 disability for which the person has been receiving a monthly
27 disability pension is eligible for reappointment to the classified

1 position that the person held on the date the person qualified for
2 the monthly disability pension.

3 [Sections 177.205-177.250 reserved for expansion]

4 SUBCHAPTER F. MISCELLANEOUS PROVISIONS

5 Sec. 177.251. DETERMINATION OF PHYSICAL AND MENTAL FITNESS.

6 (a) If a question arises as to whether a firefighter is
7 sufficiently physically or mentally fit to continue the person's
8 duties, the firefighter shall submit to the commission a report
9 from the person's personal physician, psychiatrist, or
10 psychologist, as appropriate.

11 (b) If the commission, the department head, or the
12 firefighter questions the report, the commission shall appoint a
13 physician, psychiatrist, or psychologist, as appropriate, to
14 examine the firefighter and to submit a report to the commission,
15 the department head, and the firefighter.

16 (c) If the report of the appointed physician, psychiatrist,
17 or psychologist, as appropriate, disagrees with the report of the
18 firefighter's personal physician, psychiatrist, or psychologist,
19 as appropriate, the commission shall appoint a three-member board
20 composed of a physician, a psychiatrist, and a psychologist, or any
21 combination, as appropriate, to examine the firefighter. The
22 board's findings as to the person's fitness for duty shall determine
23 the issue.

24 (d) The firefighter shall pay the cost of the services of
25 the person's personal physician, psychiatrist, or psychologist, as
26 appropriate. The fire department shall pay all other costs.

27 Sec. 177.252. FORCE REDUCTION AND REINSTATEMENT LIST. (a)

1 If the governing body vacates or abolishes a fire department
2 position, the firefighter who holds that position shall be demoted
3 to the position immediately below the vacated or abolished
4 position. If one or more positions of equal rank are vacated or
5 abolished, the firefighters who have the least seniority in a
6 position shall be demoted to the position immediately below the
7 vacated or abolished position.

8 (b) If a firefighter is demoted under Subsection (a) without
9 charges being filed against the person for violation of civil
10 service rules, the firefighter shall be placed on a position
11 reinstatement list in order of seniority. If the vacated or
12 abolished position is filled or re-created within one year after
13 the date it was vacated or abolished, the position must be filled
14 from the reinstatement list. Appointments from the reinstatement
15 list shall be made in order of seniority. A person who is not on the
16 list may not be appointed to the position during the one-year period
17 until the reinstatement list is exhausted.

18 (c) If a position in the lowest classification is abolished
19 or vacated and a firefighter must be dismissed from the department,
20 the firefighter with the least seniority shall be dismissed.

21 (d) If a firefighter is dismissed under Subsection (c)
22 without charges being filed against the person for violation of
23 civil service rules, the firefighter shall be placed on a
24 reinstatement list in order of seniority. Appointments from the
25 reinstatement list shall be made in order of seniority. Until the
26 reinstatement list is exhausted, a person may not be appointed from
27 an eligibility list. When a person has been on a reinstatement list

1 for three years, the person shall be dropped from the list but shall
2 be restored to the list at the request of the commission.

3 Sec. 177.253. POLITICAL ACTIVITIES. (a) While in uniform
4 or on active duty, a firefighter may not take an active part in
5 another person's political campaign for an elective position of the
6 political subdivision.

7 (b) For purposes of this section, a person takes an active
8 part in a political campaign if the person:

9 (1) makes a political speech;

10 (2) distributes a card or other political literature;

11 (3) writes a letter;

12 (4) signs a petition;

13 (5) actively and openly solicits votes; or

14 (6) makes public derogatory remarks about a candidate
15 for the elective position.

16 (c) A firefighter may not be:

17 (1) required to contribute to a political fund or to
18 render a political service to a person or political party; or

19 (2) removed, reduced in classification or salary, or
20 otherwise prejudiced for refusing to contribute to a political fund
21 or to render a political service.

22 (d) An official of the political subdivision who attempts to
23 violate Subsection (c) violates this chapter.

24 (e) Except as expressly provided by this section, the
25 commission or the governing body may not restrict a firefighter's
26 right to engage in a political activity.

27 Sec. 177.254. STRIKE PROHIBITION. (a) A firefighter may

1 not engage in a strike against the fire department.

2 (b) In addition to the penalty prescribed by Section
3 177.016, if a firefighter is convicted of an offense for violating
4 this section, the person shall be automatically released and
5 discharged from the fire department. After the person is
6 discharged from the department, the person may not receive any pay
7 or compensation from public funds used to support the fire
8 department.

9 Sec. 177.255. UNLAWFUL RESIGNATION OR RETIREMENT. (a) A
10 person commits an offense if the person accepts money or anything of
11 value from another person in return for retiring or resigning from
12 the person's civil service position.

13 (b) A person commits an offense if the person gives money or
14 anything of value to another person in return for the other person's
15 retirement or resignation from the person's civil service position.

16 (c) An offense under this section is a Class A misdemeanor.

17 Sec. 177.256. PERSONNEL FILE. (a) The director or the
18 director's designee shall maintain a personnel file on each
19 firefighter. The personnel file must contain any letter,
20 memorandum, or document relating to:

21 (1) a commendation, congratulation, or honor bestowed
22 on the firefighter by a member of the public or by the employing
23 department for an action, duty, or activity that relates to the
24 person's official duties;

25 (2) any misconduct by the firefighter if the
26 misconduct resulted in disciplinary action by the employing
27 department in accordance with this chapter; and

1 (3) the periodic evaluation of the firefighter by a
2 supervisor.

3 (b) A letter, memorandum, or document relating to alleged
4 misconduct by the firefighter may not be placed in the person's
5 personnel file if the employing department determines there is
6 insufficient evidence to sustain the charge of misconduct.

7 (c) A letter, memorandum, or document relating to
8 disciplinary action taken against the firefighter or to alleged
9 misconduct by the firefighter that is placed in the person's
10 personnel file as provided by Subsection (a)(2) shall be removed
11 from the employee's file if the commission finds that:

12 (1) the disciplinary action was taken without just
13 cause; or

14 (2) the charge of misconduct was not supported by
15 sufficient evidence.

16 (d) If a negative letter, memorandum, document, or other
17 notation of negative impact is included in a firefighter's
18 personnel file, the director or the director's designee shall,
19 within 30 days after the date of the inclusion, notify the affected
20 firefighter. The firefighter may, on or before the 15th day after
21 the date of receipt of the notification, file a written response to
22 the negative letter, memorandum, document, or other notation.

23 (e) The firefighter is entitled, on request, to a copy of
24 any letter, memorandum, or document placed in the person's
25 personnel file. The fire department may charge the firefighter a
26 reasonable fee not to exceed actual cost for any copies provided
27 under this subsection.

1 (f) The director or the director's designee may not release
2 any information contained in a firefighter's personnel file without
3 first obtaining the person's written permission, unless the release
4 of the information is required by law.

5 (g) A fire department may maintain a personnel file on a
6 firefighter employed by the department for the department's use,
7 but the department may not release any information contained in the
8 department file to any agency or person requesting information
9 relating to a firefighter, except to the firefighter or the
10 firefighter's designee. The department shall refer to the director
11 or the director's designee a person or agency that requests
12 information that is maintained in the firefighter's personnel file.

13 SECTION 3. This Act takes effect September 1, 2003.