

1-1 By: Barrientos S.B. No. 911  
1-2 (In the Senate - Filed March 12, 2003; March 17, 2003, read  
1-3 first time and referred to Committee on Intergovernmental  
1-4 Relations; May 19, 2003, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 3, Nays 0;  
1-6 May 19, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 911 By: Gallegos

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to firefighter employment in certain political  
1-11 subdivisions; providing criminal penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle C, Title 5, Local Government Code, is  
1-14 amended by adding Chapter 176 to read as follows:

1-15 CHAPTER 176. FIREFIGHTERS EMPLOYED BY CERTAIN LOCAL GOVERNMENTS

1-16 Sec. 176.001. APPLICABILITY. This chapter does not apply  
1-17 to:

1-18 (1) a municipality; or

1-19 (2) a county.

1-20 Sec. 176.002. DEFINITIONS. In this chapter:

1-21 (1) "Member of a fire department" means an employee of  
1-22 a fire department who is defined as "fire protection personnel" by  
1-23 Section 419.021, Government Code.

1-24 (2) "Political subdivision" includes:

1-25 (A) any special district or other local  
1-26 government; and

1-27 (B) the administrative agency or supervising  
1-28 local government governing a fire department established by two or  
1-29 more governmental entities that have entered an interlocal contract  
1-30 under Chapter 791, Government Code, to obtain fire protection  
1-31 services.

1-32 Sec. 176.003. PAYROLL DEDUCTIONS. (a) The governing body  
1-33 of a political subdivision may deduct from a member of the fire  
1-34 department's monthly salary or wages an amount requested in writing  
1-35 by the member of the fire department in payment of membership dues  
1-36 to a bona fide employees' association named by the member of the  
1-37 fire department.

1-38 (b) Participation in the payroll deduction program by a  
1-39 member of the fire department is voluntary.

1-40 (c) A member of the fire department's written request must:

1-41 (1) be set out in a form prescribed and provided by the  
1-42 chief financial official of the political subdivision;

1-43 (2) state the amount to be deducted each month; and

1-44 (3) direct the chief financial official to transfer  
1-45 the deducted funds to the designated employees' association.

1-46 (d) The amount deducted each month may not exceed the amount  
1-47 stated in the written request. However, the governing body of a  
1-48 political subdivision may impose and collect an administrative fee  
1-49 from each participating member of the fire department in addition  
1-50 to the membership dues withheld. The fee must be in an amount  
1-51 reasonable and necessary to cover the administrative costs of  
1-52 collecting, accounting for, and disbursing the membership dues.

1-53 (e) A request under this section remains in effect until the  
1-54 chief financial official receives written notice of revocation in a  
1-55 form prescribed and provided by the chief financial official and  
1-56 filed by the member of the fire department.

1-57 Sec. 176.004. LONGEVITY PAY. Each member of a fire  
1-58 department of a political subdivision is entitled to receive, in  
1-59 addition to all other money paid for services rendered in the  
1-60 department, longevity pay of \$4 a month for each year of service in  
1-61 the department, not to exceed 25 years.

1-62 Sec. 176.005. CLASSIFICATION OF POSITIONS; SALARY  
1-63 SCHEDULE. (a) Each political subdivision shall:

2-1           (1) classify all positions in its fire department; and  
2-2           (2) specify the duties and prescribe the salary for  
2-3 each classification.

2-4           (b) A member of a fire department who is required to perform  
2-5 the duties of a particular classification is entitled to be paid the  
2-6 salary prescribed for that classification during the time the  
2-7 member performs those duties.

2-8           Sec. 176.006. PENALTY. (a) An official of a political  
2-9 subdivision who is in charge of the fire department or is  
2-10 responsible for setting the compensation, hours, or other working  
2-11 conditions provided by this chapter commits an offense if the  
2-12 official violates this chapter.

2-13           (b) An offense under this section is punishable by a fine of  
2-14 not less than \$10 or more than \$100.

2-15           (c) Each day the official causes or permits a violation of  
2-16 this chapter to occur is a separate offense.

2-17           Sec. 176.007. VACATION DAYS AND HOLIDAYS OF MEMBERS OF FIRE  
2-18 DEPARTMENT. (a) A member of a fire department in a political  
2-19 subdivision who has been regularly employed by the department for  
2-20 at least one year is entitled to the greater of:

2-21           (1) 15 vacation days with pay each year; or  
2-22           (2) the same number of vacation days with pay as is  
2-23 granted to other employees of the political subdivision with the  
2-24 same length of service.

2-25           (b) The department head or the department head's designee  
2-26 shall designate the days during which the member may be on vacation.

2-27           (c) A member of the fire department is entitled to the same  
2-28 number of paid holidays, or days of paid leave in lieu of holidays,  
2-29 as is granted to other employees of the political subdivision.

2-30           Sec. 176.008. HOURS OF LABOR AND OVERTIME PAY OF MEMBERS OF  
2-31 FIRE DEPARTMENT. (a) In this section, "work cycle" means the  
2-32 period in a posted work schedule starting at the time the cycle  
2-33 begins and ending at the time the cycle begins to repeat itself.  
2-34 The cycle may span any number of days not less than seven or more  
2-35 than 28.

2-36           (b) A member of a fire department is considered to have  
2-37 worked overtime and is entitled to be compensated for the overtime  
2-38 as provided by Subsection (e) if the member:

2-39           (1) is not exempt under the federal Fair Labor  
2-40 Standards Act of 1938 (29 U.S.C. Section 201 et seq.), as amended;  
2-41 and

2-42           (2) is required or permitted to work more than the  
2-43 number of hours that bears the same ratio to 212 hours as the number  
2-44 of days in the work period bears to 28 days.

2-45           (c) A member of a fire department is considered to have  
2-46 worked overtime and is entitled to be compensated for the overtime  
2-47 as provided by Subsection (e) if the member:

2-48           (1) does not fight fires or provide emergency medical  
2-49 services, including a member who is a mechanic, clerk,  
2-50 investigator, inspector, fire marshal, fire alarm dispatcher, and  
2-51 maintenance worker;

2-52           (2) is not exempt under the federal Fair Labor  
2-53 Standards Act of 1938 (29 U.S.C. Section 201 et seq.), as amended;  
2-54 and

2-55           (3) is required or permitted to average more hours in a  
2-56 week than the number of hours in a normal work week of the majority  
2-57 of the employees of the political subdivision other than  
2-58 firefighters, emergency medical service personnel, and police  
2-59 officers.

2-60           (d) In determining the number of hours worked by a member of  
2-61 a fire department who is covered by this section and 29 U.S.C.  
2-62 Section 207(k), as amended:

2-63           (1) all hours are counted during which the member of  
2-64 the fire department is required to remain on call on the employer's  
2-65 premises or so close to the premises that the member cannot use  
2-66 those hours effectively for that member's own purposes;

2-67           (2) hours during which the member of the fire  
2-68 department is required to leave a telephone number at which the  
2-69 member may be reached or is required to remain accessible by radio

3-1 or pager are not counted; and  
3-2 (3) vacation, sick time, holidays, time off in lieu of  
3-3 holidays, or compensatory time may be excluded as hours worked.

3-4 (e) A member of a fire department may be required or  
3-5 permitted to work overtime. A member of a fire department who is  
3-6 not exempt under the federal Fair Labor Standards Act of 1938 (29  
3-7 U.S.C. Section 201 et seq.), as amended, and who is required or  
3-8 permitted to work overtime as provided by Subsection (b) or (c) is  
3-9 entitled to be paid overtime for the excess hours worked without  
3-10 regard to the number of hours worked in any one week of a work cycle.  
3-11 Overtime hours are paid at a rate equal to 1-1/2 times the  
3-12 compensation paid to the member of the fire department for regular  
3-13 hours.

3-14 (f) Nothing in this section prevents a member of a fire  
3-15 department from working extra hours when exchanging work hours with  
3-16 another member of the fire department with the consent of the  
3-17 department head.

3-18 Sec. 176.009. PAYMENT FOR COURT APPEARANCES OF  
3-19 FIREFIGHTERS. (a) A political subdivision shall pay a member of a  
3-20 fire department for an appearance as a witness in a criminal case or  
3-21 a civil suit in which the political subdivision is a party in  
3-22 interest if the appearance:

- 3-23 (1) is required;
- 3-24 (2) is made on time off; and
- 3-25 (3) is made by the member in the member's capacity as a  
3-26 member of the fire department.

3-27 (b) Payment under this section is at the member's regular  
3-28 rate of pay.

3-29 (c) Payment under this section may be taxed as court costs  
3-30 in civil suits.

3-31 (d) This section does not reduce or prohibit compensation  
3-32 paid in excess of the regular rate of pay.

3-33 SECTION 2. Subtitle C, Title 5, Local Government Code, is  
3-34 amended by adding Chapter 177 to read as follows:

3-35 CHAPTER 177. FIREFIGHTER CIVIL SERVICE FOR CERTAIN LOCAL  
3-36 GOVERNMENTS

3-37 SUBCHAPTER A. GENERAL PROVISIONS

3-38 Sec. 177.001. PURPOSE. (a) The purpose of this chapter is  
3-39 to secure efficient fire departments composed of capable personnel  
3-40 who are free from political influence and who have permanent  
3-41 employment tenure as public servants.

3-42 (b) The members of the Firefighters' Civil Service  
3-43 Commission shall administer this chapter in accordance with this  
3-44 purpose.

3-45 Sec. 177.002. ENTITIES AND POLITICAL SUBDIVISIONS COVERED  
3-46 BY CHAPTER. (a) This chapter applies to a fire department:

- 3-47 (1) that employs one or more persons who are defined as  
3-48 fire protection personnel by Section 419.021, Government Code;
- 3-49 (2) that provides fire protection services to two or  
3-50 more governmental entities that have entered an interlocal contract  
3-51 under Chapter 791, Government Code, to obtain fire protection  
3-52 services; and
- 3-53 (3) for which this chapter has been adopted in  
3-54 accordance with Section 177.004.

3-55 (b) Except as provided by Subsection (c), this chapter  
3-56 applies to a political subdivision that:

- 3-57 (1) has a paid fire department; and
- 3-58 (2) has adopted this chapter in accordance with  
3-59 Section 177.005.

3-60 (c) This chapter does not apply to a municipality with a  
3-61 population of 10,000 or more or to a county.

3-62 Sec. 177.003. DEFINITIONS. In this chapter:

- 3-63 (1) "Chief executive" means the chief executive of:
  - 3-64 (A) the governing body of the administrative  
3-65 agency or supervising local government governing a fire department  
3-66 described by Section 177.002(a); or
  - 3-67 (B) any special district or other local  
3-68 government described by Section 177.002(b).
- 3-69 (2) "Commission" means the Firefighters' Civil Service

4-1 Commission.  
 4-2 (3) "Department head" means the chief or head of a fire  
 4-3 department or that person's equivalent, regardless of the name or  
 4-4 title used.  
 4-5 (4) "Director" means the director of the firefighters'  
 4-6 civil service.  
 4-7 (5) "Firefighter" means a member of a fire department  
 4-8 who was appointed in substantial compliance with this chapter or  
 4-9 who is entitled to civil service status under Section 177.006. The  
 4-10 term includes members who perform:  
 4-11 (A) fire suppression;  
 4-12 (B) fire prevention;  
 4-13 (C) fire training;  
 4-14 (D) fire safety education;  
 4-15 (E) fire maintenance;  
 4-16 (F) fire communications;  
 4-17 (G) fire medical emergency technology;  
 4-18 (H) fire photography;  
 4-19 (I) fire administration; or  
 4-20 (J) fire arson investigation.  
 4-21 (6) "Governing body" means the governing body of the  
 4-22 administrative agency or supervising local government governing a  
 4-23 fire department described in Section 177.002(a) or the governing  
 4-24 body for a political subdivision described in Section 177.002(b),  
 4-25 as applicable.  
 4-26 Sec. 177.004. ELECTION TO ADOPT OR REPEAL CHAPTER: FIRE  
 4-27 DEPARTMENT SERVING TWO OR MORE ENTITIES. (a) A fire department to  
 4-28 which this chapter applies under Section 177.002(a) may adopt this  
 4-29 chapter by majority vote of:  
 4-30 (1) its governing body; or  
 4-31 (2) the qualified voters in the governmental entities  
 4-32 served by the fire department, in accordance with this section.  
 4-33 (b) If the governing body of the fire department receives a  
 4-34 petition requesting an election that is signed by a number of  
 4-35 qualified voters of the affected governmental entities served by  
 4-36 the fire department equal to at least 10 percent of the combined  
 4-37 total number of voters of the governmental entities who voted in the  
 4-38 most recent general election, the governing body shall order an  
 4-39 election submitting to the voters of the governmental entities the  
 4-40 question of whether this chapter should be adopted. The election  
 4-41 must be held on the first authorized uniform election date  
 4-42 prescribed by Chapter 41, Election Code, that occurs after the  
 4-43 petition is filed and allows sufficient time to comply with other  
 4-44 requirements of law.  
 4-45 (c) The ballot shall be printed to provide for voting for or  
 4-46 against the proposition: "Adoption of the firefighters' civil  
 4-47 service law." If a majority of the votes received in the election  
 4-48 favor adoption of this chapter, the governing body shall implement  
 4-49 this chapter.  
 4-50 (d) If an election is held under Subsection (b), a petition  
 4-51 for a subsequent election to be held under that subsection may not  
 4-52 be filed for at least one year after the date the previous election  
 4-53 was held. To be valid, a petition for a subsequent election must  
 4-54 contain the signatures of a number of qualified voters of the  
 4-55 affected governmental entities equal to at least 20 percent of the  
 4-56 combined total number of voters who voted in the most recent general  
 4-57 election. Any subsequent election must be held on the first  
 4-58 authorized uniform election date prescribed by Chapter 41, Election  
 4-59 Code, that occurs after the petition is filed and allows sufficient  
 4-60 time to comply with other requirements of law.  
 4-61 (e) If the governing body of a fire department described by  
 4-62 Subsection (a) that has operated under this chapter for at least one  
 4-63 year receives a petition requesting an election to repeal this  
 4-64 chapter that is signed by at least 10 percent of the combined number  
 4-65 of qualified voters of the affected governmental entities, the  
 4-66 governing body shall order an election submitting to the voters the  
 4-67 question of whether this chapter should be repealed. If a majority  
 4-68 of the qualified voters vote to repeal this chapter, this chapter  
 4-69 does not apply to the fire department.

5-1 Sec. 177.005. ELECTION BY POLITICAL SUBDIVISION WITH PAID  
 5-2 FIRE DEPARTMENT TO ADOPT OR REPEAL CHAPTER. (a) A political  
 5-3 subdivision to which this chapter applies under Section 177.002(b)  
 5-4 may adopt this chapter by majority vote of:

5-5 (1) its governing body; or

5-6 (2) the qualified voters in the political subdivision  
 5-7 in accordance with this section.

5-8 (b) If the governing body of the political subdivision  
 5-9 receives a petition requesting an election that is signed by a  
 5-10 number of qualified voters of the political subdivision equal to at  
 5-11 least 10 percent of the number of voters who voted in the most  
 5-12 recent general election, the governing body shall order an election  
 5-13 submitting to the voters the question of whether this chapter  
 5-14 should be adopted. The election must be held on the first  
 5-15 authorized uniform election date prescribed by Chapter 41, Election  
 5-16 Code, that occurs after the petition is filed and allows sufficient  
 5-17 time to comply with other requirements of law.

5-18 (c) The ballot shall be printed to provide for voting for or  
 5-19 against the proposition: "Adoption of the firefighters' civil  
 5-20 service law." If a majority of the votes received in the election  
 5-21 favor adoption of this chapter, the governing body shall implement  
 5-22 this chapter.

5-23 (d) If an election is held under Subsection (b), a petition  
 5-24 for a subsequent election to be held under that subsection may not  
 5-25 be filed for at least one year after the date the previous election  
 5-26 was held. To be valid, a petition for a subsequent election must  
 5-27 contain the signatures of a number of qualified voters of the  
 5-28 political subdivision equal to at least 20 percent of the number of  
 5-29 voters who voted in the most recent general election. Any  
 5-30 subsequent election must be held on the first authorized uniform  
 5-31 election date prescribed by Chapter 41, Election Code, that occurs  
 5-32 after the petition is filed and allows sufficient time to comply  
 5-33 with other requirements of law.

5-34 (e) If the governing body of a political subdivision that  
 5-35 has operated under this chapter for at least one year receives a  
 5-36 petition requesting an election to repeal this chapter that is  
 5-37 signed by at least 10 percent of the qualified voters of the  
 5-38 political subdivision, the governing body shall order an election  
 5-39 submitting to the voters the question of whether this chapter  
 5-40 should be repealed. If a majority of the qualified voters vote to  
 5-41 repeal this chapter, this chapter does not apply in that political  
 5-42 subdivision.

5-43 Sec. 177.006. STATUS OF EMPLOYEES IF CHAPTER ADOPTED. Each  
 5-44 firefighter serving in a fire department for which this chapter has  
 5-45 been adopted under Section 177.004 or 177.005 has the status of a  
 5-46 civil service employee and is not required to take a competitive  
 5-47 examination to remain in the position the firefighter occupies at  
 5-48 the time of the adoption if the firefighter:

5-49 (1) has been in the service of the fire department for  
 5-50 more than six months at the time this chapter is adopted; and

5-51 (2) is otherwise entitled to civil service  
 5-52 classification.

5-53 Sec. 177.007. IMPLEMENTATION; COMMISSION. (a) On  
 5-54 adoption of this chapter, the Firefighters' Civil Service  
 5-55 Commission is established for the fire department. The chief  
 5-56 executive shall appoint the members of the commission within 60  
 5-57 days after the date this chapter is adopted. Within 30 days after  
 5-58 the first day of the first full fiscal year applicable to the fire  
 5-59 department that begins after the date of the adoption election, the  
 5-60 governing body shall implement this chapter.

5-61 (b) The commission consists of three members appointed by  
 5-62 the chief executive and confirmed by the governing body. Members  
 5-63 serve staggered two-year terms with the term of at least one member  
 5-64 expiring each year. If a vacancy occurs or if an appointee fails to  
 5-65 qualify within 10 days after the date of appointment, the chief  
 5-66 executive shall appoint a person to serve for the remainder of the  
 5-67 unexpired term in the same manner as the original appointee.

5-68 (c) A person appointed to the commission must:

5-69 (1) be of good moral character;

6-1 (2) be a United States citizen;

6-2 (3) be a resident of a political subdivision served by  
6-3 the fire department who has resided in the political subdivision  
6-4 for more than three years;

6-5 (4) be over 25 years of age; and

6-6 (5) not have held a public office within the preceding  
6-7 three years.

6-8 (d) In making initial appointments, the chief executive  
6-9 shall designate one member to serve a one-year term and two members  
6-10 to serve two-year terms.

6-11 (e) Initial members shall elect a presiding officer and an  
6-12 assistant presiding officer within 10 days after the date all  
6-13 members have qualified. Each January, the members shall elect a  
6-14 presiding officer and an assistant presiding officer.

6-15 (f) The governing body shall provide to the commission  
6-16 adequate and suitable office space in which to conduct business.

6-17 (g) The chief executive commits an offense if the chief  
6-18 executive knowingly or intentionally fails to appoint the initial  
6-19 members of the commission within the 60-day period prescribed by  
6-20 Subsection (a). An offense under this subsection is a misdemeanor  
6-21 punishable by a fine of not less than \$100 or more than \$200. Each  
6-22 day after the 60-day period that the chief executive knowingly or  
6-23 intentionally fails to make a required appointment constitutes a  
6-24 separate offense.

6-25 (h) The chief executive or another official of the fire  
6-26 department or a political subdivision commits an offense if the  
6-27 person knowingly or intentionally refuses to implement this chapter  
6-28 or attempts to obstruct the enforcement of this chapter. An offense  
6-29 under this subsection is a misdemeanor punishable by a fine of not  
6-30 less than \$100 or more than \$200.

6-31 Sec. 177.008. REMOVAL OF COMMISSION MEMBER. (a) If at a  
6-32 meeting held for that purpose the governing body finds that a  
6-33 commission member is guilty of misconduct in office, the governing  
6-34 body may remove the member. The member may request that the meeting  
6-35 be held as an open hearing in accordance with Chapter 551,  
6-36 Government Code.

6-37 (b) If a commission member is indicted or charged by  
6-38 information with a criminal offense involving moral turpitude, the  
6-39 member is automatically suspended from office until the disposition  
6-40 of the charge. Unless the member pleads guilty or is found to be  
6-41 guilty, the member shall resume office at the time of disposition of  
6-42 the charge.

6-43 (c) The governing body may appoint a substitute commission  
6-44 member during a period of suspension. If a member pleads guilty to  
6-45 or is found to be guilty of a criminal offense involving moral  
6-46 turpitude, the conviction removes the member from the commission  
6-47 and the governing body shall appoint a replacement commission  
6-48 member to serve the remainder of the disqualified member's term of  
6-49 office.

6-50 Sec. 177.009. ADOPTION AND PUBLICATION OF RULES. (a) The  
6-51 commission shall adopt rules necessary for the proper conduct of  
6-52 commission business.

6-53 (b) The commission may not adopt a rule permitting the  
6-54 appointment or employment of a person who is:

6-55 (1) without good moral character;

6-56 (2) physically or mentally unfit; or

6-57 (3) incompetent to discharge the duties of the  
6-58 appointment or employment.

6-59 (c) The commission shall adopt rules that prescribe cause  
6-60 for removal or suspension of a firefighter. The rules must comply  
6-61 with the grounds for removal prescribed by Section 177.151.

6-62 (d) The commission shall publish each rule it adopts and  
6-63 each classification and seniority list for the fire department.  
6-64 The rules and lists shall be made available on demand. A rule is  
6-65 considered to be adopted and sufficiently published if the  
6-66 commission adopts the rule by majority vote and reduces the rule to  
6-67 writing. Publication in a newspaper is not required. The governing  
6-68 body may not act on the rule.

6-69 (e) A rule is not valid and binding on the commission until

7-1 the commission:

7-2 (1) mails a copy of the rule to the fire commissioner,  
7-3 if the political subdivision has an elected fire commissioner, and  
7-4 to the department head;

7-5 (2) posts a copy of the rule for a seven-day period at  
7-6 a conspicuous place in the central fire station; and

7-7 (3) mails a copy of the rule to each branch fire  
7-8 station.

7-9 (f) The director shall keep copies of all rules for free  
7-10 distribution to members of the fire department who request copies  
7-11 and for inspection by any interested person.

7-12 Sec. 177.010. COMMISSION INVESTIGATIONS AND INSPECTIONS.

7-13 (a) The commission or a commission member designated by the  
7-14 commission may investigate and report on all matters relating to  
7-15 the enforcement and effect of this chapter and any rules adopted  
7-16 under this chapter and shall determine if the chapter and rules are  
7-17 being obeyed.

7-18 (b) During an investigation, the commission or the  
7-19 commission member may:

7-20 (1) administer oaths;

7-21 (2) issue subpoenas to compel the attendance of  
7-22 witnesses and the production of books, papers, documents, and  
7-23 accounts relating to the investigation; and

7-24 (3) depose witnesses residing inside or outside the  
7-25 state.

7-26 (c) A deposition taken in connection with an investigation  
7-27 under this section must be taken in the manner prescribed by law for  
7-28 taking a similar deposition in a civil action in federal district  
7-29 court.

7-30 (d) An oath administered or a subpoena issued under this  
7-31 section has the same force and effect as an oath administered by a  
7-32 magistrate in the magistrate's judicial capacity.

7-33 (e) A person who fails to respond to a subpoena issued under  
7-34 this section commits an offense punishable as prescribed by Section  
7-35 177.016.

7-36 Sec. 177.011. COMMISSION APPEAL PROCEDURE. (a) Except as  
7-37 otherwise provided by this chapter, if a firefighter wants to  
7-38 appeal to the commission an action for which an appeal or review is  
7-39 provided by this chapter, the firefighter must file an appeal with  
7-40 the commission within 10 days after the date the action occurred.

7-41 (b) The appeal must:

7-42 (1) include the basis for the appeal and a request for  
7-43 a commission hearing; and

7-44 (2) contain a statement that:

7-45 (A) denies the truth of the charge as made;

7-46 (B) takes exception to the legal sufficiency of  
7-47 the charge;

7-48 (C) alleges the recommended action does not fit  
7-49 the offense or alleged offense; or

7-50 (D) combines any of the statements in Paragraphs  
7-51 (A)-(C).

7-52 (c) In each hearing, appeal, or review of any kind in which  
7-53 the commission performs an adjudicatory function, the affected  
7-54 firefighter is entitled to be represented by counsel or a person the  
7-55 firefighter chooses. Each commission proceeding shall be held in  
7-56 public.

7-57 (d) The commission may issue subpoenas and subpoenas duces  
7-58 tecum for the attendance of witnesses and for the production of  
7-59 documentary material.

7-60 (e) The affected firefighter may request that the  
7-61 commission subpoena any books, records, documents, papers,  
7-62 accounts, or witnesses that the firefighter considers pertinent to  
7-63 the case. The firefighter must make the request before the 10th day  
7-64 before the date the commission hearing will be held. If the  
7-65 commission does not subpoena the material, the commission shall,  
7-66 before the third day before the date the hearing will be held, make  
7-67 a written report to the firefighter stating the reason the  
7-68 commission will not subpoena the requested material. This report  
7-69 shall be read into the public record of the commission hearing.

8-1 (f) Witnesses may be placed under the rule at the commission  
 8-2 hearing.

8-3 (g) The commission shall conduct the hearing fairly and  
 8-4 impartially as prescribed by this chapter and shall render a just  
 8-5 and fair decision. The commission may consider only the evidence  
 8-6 submitted at the hearing.

8-7 (h) The commission shall maintain a public record of each  
 8-8 proceeding with copies available at cost.

8-9 Sec. 177.012. DECISIONS AND RECORDS. (a) Each concurring  
 8-10 commission member shall sign a decision issued by the commission.

8-11 (b) The commission shall keep records of each hearing or  
 8-12 case that comes before the commission.

8-13 (c) Each rule, opinion, directive, decision, or order  
 8-14 issued by the commission must be written and is a public record that  
 8-15 the commission shall retain on file.

8-16 Sec. 177.013. DIRECTOR. (a) On adoption of this chapter,  
 8-17 the office of director of the firefighters' civil service is  
 8-18 established for the fire department. The commission shall appoint  
 8-19 the director and may remove the director at any time. The director  
 8-20 shall:

8-21 (1) serve as secretary to the commission; and

8-22 (2) perform work incidental to the civil service  
 8-23 system as required by the commission.

8-24 (b) A person appointed as director must meet each  
 8-25 requirement for appointment to the commission prescribed by Section  
 8-26 177.007(c) except the local residency requirement.

8-27 (c) A person appointed as director may be a commission  
 8-28 member, an employee of an affected political subdivision, or  
 8-29 another person.

8-30 (d) The governing body shall determine the salary, if any,  
 8-31 to be paid to the director.

8-32 Sec. 177.014. APPOINTMENT AND REMOVAL OF DEPARTMENT HEAD.  
 8-33 (a) Unless elected, each department head is appointed by the chief  
 8-34 executive and confirmed by the governing body.

8-35 (b) A person appointed as head of a fire department must be  
 8-36 eligible for certification by the Texas Commission on Fire  
 8-37 Protection at the intermediate level or its equivalent as  
 8-38 determined by that commission and must have served as a fully paid  
 8-39 firefighter for at least five years.

8-40 (c) Except as provided by Subsection (d), if a person is  
 8-41 removed from the position of department head the person shall be  
 8-42 reinstated in the department and placed in a position with a rank  
 8-43 not lower than that held by the person immediately before  
 8-44 appointment as department head. The person retains all rights of  
 8-45 seniority in the department.

8-46 (d) A person serving as department head who is charged with  
 8-47 an offense in violation of civil service rules and is dismissed from  
 8-48 the civil service or discharged from the person's position as  
 8-49 department head has the same rights and privileges to have a hearing  
 8-50 before the commission in the same manner and under the same  
 8-51 conditions as a classified employee. If the commission finds that  
 8-52 the charges are false or unfounded, the person shall immediately be  
 8-53 restored to the same classification that the person held before  
 8-54 appointment as department head. The person has all the rights and  
 8-55 privileges pertaining to the prior position according to seniority  
 8-56 and shall be paid the person's full salary for the time of  
 8-57 suspension.

8-58 Sec. 177.015. APPEAL OF COMMISSION DECISION TO DISTRICT  
 8-59 COURT. (a) A firefighter who is dissatisfied with any commission  
 8-60 decision may file a petition in district court asking that the  
 8-61 decision be set aside. The petition must be filed within 10 days  
 8-62 after the date the final commission decision:

8-63 (1) is sent to the firefighter by certified mail; or

8-64 (2) is personally received by the firefighter or by  
 8-65 the firefighter's designee.

8-66 (b) The district court may grant the appropriate legal or  
 8-67 equitable relief necessary to accomplish the purposes of this  
 8-68 chapter. The relief may include reinstatement or promotion with  
 8-69 back pay if an order of suspension, dismissal, or demotion is set



9-1 aside.

9-2 (c) The court may award reasonable attorney's fees to the  
9-3 prevailing party and assess court costs against the nonprevailing  
9-4 party.

9-5 (d) If the court finds for the firefighter, the court shall  
9-6 order the governing body to ensure that lost wages are paid to the  
9-7 firefighter.

9-8 Sec. 177.016. PENALTY FOR VIOLATION OF CHAPTER. (a) A  
9-9 person commits an offense if the person violates this chapter.

9-10 (b) An offense under this section or Section 177.010 is a  
9-11 misdemeanor punishable by a fine of not less than \$10 or more than  
9-12 \$100, confinement in the county jail for not more than 30 days, or  
9-13 both the fine and confinement.

9-14 [Sections 177.017-177.050 reserved for expansion]

9-15 SUBCHAPTER B. CLASSIFICATION AND APPOINTMENT

9-16 Sec. 177.051. CLASSIFICATION; EXAMINATION REQUIREMENT.

9-17 (a) The commission shall provide for the classification of all  
9-18 firefighters. The governing body shall:

9-19 (1) establish the classifications; and

9-20 (2) prescribe the number of positions in each  
9-21 classification.

9-22 (b) Except for the department head, each firefighter is  
9-23 classified as prescribed by this subchapter and has civil service  
9-24 protection. The failure of the governing body to establish a  
9-25 position does not result in the loss of civil service benefits by a  
9-26 person entitled to civil service protection or appointed to the  
9-27 position in substantial compliance with this chapter.

9-28 (c) Except as provided by Section 177.014, an existing  
9-29 position or classification or a position or classification created  
9-30 in the future either by name or by increase in salary may be filled  
9-31 only from an eligibility list that results from an examination held  
9-32 in accordance with this chapter.

9-33 Sec. 177.052. PHYSICAL REQUIREMENTS AND EXAMINATIONS.

9-34 (a) The commission shall set the age and physical requirements for  
9-35 applicants for beginning and promotional positions in accordance  
9-36 with this chapter. The requirements must be the same for all  
9-37 applicants.

9-38 (b) The commission shall require each applicant for a  
9-39 beginning or a promotional position to take an appropriate physical  
9-40 examination. The commission may require each applicant for a  
9-41 beginning position to take a mental examination. The examination  
9-42 shall be administered by a physician, psychiatrist, or  
9-43 psychologist, as appropriate, appointed by the commission. The  
9-44 fire department shall pay for each examination.

9-45 (c) If an applicant is rejected by the physician,  
9-46 psychiatrist, or psychologist, as appropriate, the applicant may  
9-47 request another examination by a board of three physicians,  
9-48 psychiatrists, or psychologists, as appropriate, appointed by the  
9-49 commission. The applicant must pay for the board examination. The  
9-50 board's decision is final.

9-51 Sec. 177.053. ELIGIBILITY FOR BEGINNING POSITION. (a) A  
9-52 person may not take an entrance examination for a beginning  
9-53 position in the fire department unless the person is at least 18  
9-54 years of age.

9-55 (b) An applicant may not be certified as eligible for a  
9-56 beginning position with a fire department unless the applicant  
9-57 meets all legal requirements necessary to become eligible for  
9-58 future certification by the Texas Commission on Fire Protection.

9-59 (c) Each firefighter affected by this chapter must be able  
9-60 to read and write English.

9-61 Sec. 177.054. ENTRANCE EXAMINATION NOTICE. (a) Before the  
9-62 10th day before the date an entrance examination is held, the  
9-63 commission shall post a notice of the examination in plain view on a  
9-64 bulletin board located in the main lobby of the governing body's  
9-65 offices and in the commission's office. The notice must show the  
9-66 position to be filled or for which the examination is to be held and  
9-67 the date, time, and place of the examination.

9-68 (b) The notice required by Subsection (a) must also state  
9-69 the period during which the eligibility list created as a result of

10-1 the examination will be effective.

10-2 Sec. 177.055. ENTRANCE EXAMINATIONS. (a) The commission  
 10-3 shall provide for open, competitive, and free entrance examinations  
 10-4 to provide eligibility lists for beginning positions in the fire  
 10-5 department. The examinations are open to each person who makes a  
 10-6 proper application and meets the requirements prescribed by this  
 10-7 chapter.

10-8 (b) An eligibility list for a beginning position in the fire  
 10-9 department may be created only as a result of a competitive  
 10-10 examination held in the presence of each applicant for the  
 10-11 position, except as provided by Subsection (d). The examination  
 10-12 must be based on the applicant's knowledge of and qualifications  
 10-13 for fire fighting and work in the fire department and must inquire  
 10-14 into the applicant's general education and mental ability. A  
 10-15 person may not be appointed to the fire department except as a  
 10-16 result of the examination.

10-17 (c) An applicant may not take an examination unless at least  
 10-18 one other applicant taking the examination is present.

10-19 (d) Examinations for beginning positions in the fire  
 10-20 department may be held at different locations if each applicant  
 10-21 takes the same examination and is examined in the presence of other  
 10-22 applicants.

10-23 (e) An additional five points shall be added to the  
 10-24 examination grade of an applicant who served in the United States  
 10-25 armed forces, received an honorable discharge, and made a passing  
 10-26 grade on the examination.

10-27 (f) An applicant may not take the examination for a  
 10-28 particular eligibility list more than once.

10-29 (g) The commission shall:

10-30 (1) keep each eligibility list for a beginning  
 10-31 position in effect for a period of not less than six months or more  
 10-32 than 12 months, unless the names of all applicants on the list have  
 10-33 been referred to the fire department;

10-34 (2) determine the length of the period; and

10-35 (3) give new examinations at times the commission  
 10-36 considers necessary to provide required staffing.

10-37 (h) The grade to be placed on the eligibility list for each  
 10-38 applicant shall be computed by adding an applicant's points under  
 10-39 Subsection (e), if any, to the applicant's grade on the written  
 10-40 examination. Each applicant's grade on the written examination is  
 10-41 based on a maximum grade of 100 points and is determined entirely by  
 10-42 the correctness of the applicant's answers to the questions. The  
 10-43 minimum passing grade on the examination is 70 points. An applicant  
 10-44 must pass the examination to be placed on an eligibility list.

10-45 Sec. 177.056. PROCEDURE FOR FILLING BEGINNING POSITIONS.

10-46 (a) When a vacancy occurs in a beginning position in a fire  
 10-47 department, the department head shall request in writing from the  
 10-48 commission the names of suitable persons from the eligibility list.  
 10-49 The director shall certify to the chief executive the names of the  
 10-50 three persons having the highest grades on the eligibility list.

10-51 (b) From the three names certified, the chief executive  
 10-52 shall appoint the person having the highest grade unless there is a  
 10-53 valid reason why the person having the second or third highest grade  
 10-54 should be appointed.

10-55 (c) If the chief executive does not appoint the person  
 10-56 having the highest grade, the chief executive shall clearly set  
 10-57 forth in writing a good and sufficient reason why the person having  
 10-58 the highest grade was not appointed.

10-59 (d) The reason required by Subsection (c) shall be filed  
 10-60 with the commission and a copy provided to the person having the  
 10-61 highest grade. If the chief executive appoints the person having  
 10-62 the third highest grade, a copy of the report shall also be  
 10-63 furnished to the person having the second highest grade.

10-64 Sec. 177.057. PROBATIONARY PERIOD. (a) A person appointed  
 10-65 to a beginning position in the fire department must serve a  
 10-66 probationary period of one year beginning on that person's date of  
 10-67 employment as a firefighter.

10-68 (b) During a firefighter's probationary period, the  
 10-69 department head shall discharge the firefighter and remove the

11-1 firefighter from the payroll if the firefighter's appointment was  
 11-2 not regular or was not made in accordance with this chapter or  
 11-3 commission rules.

11-4 (c) During a firefighter's probationary period, the  
 11-5 firefighter may not be prohibited from joining or required to join  
 11-6 an employee organization. Joining or not joining an employee  
 11-7 organization is not a ground for retaining or not retaining a  
 11-8 firefighter serving a probationary period.

11-9 (d) A firefighter who was appointed in substantial  
 11-10 compliance with this chapter and who serves the entire probationary  
 11-11 period automatically becomes a civil service employee with full  
 11-12 civil service protection.

11-13 Sec. 177.058. CERTAIN ELIGIBILITY PROVISIONS RELATING TO  
 11-14 PROMOTION. (a) A firefighter is not eligible for promotion to the  
 11-15 rank of captain or its equivalent unless the person has at least  
 11-16 four years' actual service in that fire department.

11-17 (b) If a person is recalled to active military duty for not  
 11-18 more than 24 months, the two-year service requirements prescribed  
 11-19 by Section 177.060 do not apply and the person is entitled to have  
 11-20 time spent on active military duty considered as duty in the fire  
 11-21 department. If the active military duty exceeds 12 months, the  
 11-22 person on return must serve in the department for 90 days before the  
 11-23 person is eligible to participate in a promotional examination.  
 11-24 This time is considered necessary to bring the person up to date on  
 11-25 equipment and techniques.

11-26 Sec. 177.059. PROMOTIONAL EXAMINATION NOTICE. (a) Before  
 11-27 the 90th day before the date a promotional examination is held, the  
 11-28 commission shall post a notice that lists the sources from which the  
 11-29 examination questions will be taken.

11-30 (b) Before the 30th day before the date a promotional  
 11-31 examination is held, the commission shall post a notice of the  
 11-32 examination in plain view on a bulletin board located in the main  
 11-33 lobby of the administrative offices of the governing body and in the  
 11-34 commission's office. The notice must show the position to be filled  
 11-35 or for which the examination is to be held and the date, time, and  
 11-36 place of the examination. The commission shall also furnish  
 11-37 sufficient copies of the notice for posting in the stations or  
 11-38 subdepartments in which the position will be filled.

11-39 (c) The notice required by Subsection (b) may also include  
 11-40 the name of each source used for the examination, the number of  
 11-41 questions taken from each source, and the chapter used in each  
 11-42 source.

11-43 Sec. 177.060. ELIGIBILITY FOR FIRE DEPARTMENT PROMOTIONAL  
 11-44 EXAMINATION. (a) Each promotional examination is open to each  
 11-45 firefighter who at any time has continuously held for at least two  
 11-46 years a position in the classification that is immediately below,  
 11-47 in salary, the classification for which the examination is to be  
 11-48 held.

11-49 (b) If the department has adopted a classification plan that  
 11-50 classifies positions on the basis of similarity in duties and  
 11-51 responsibilities, each promotional examination is open to each  
 11-52 firefighter who has continuously held for at least two years a  
 11-53 position at the next lower pay grade, if it exists, in the  
 11-54 classification for which the examination is to be held.

11-55 (c) If there are not enough firefighters in the next lower  
 11-56 position with two years' service in that position to provide an  
 11-57 adequate number of persons to take the examination, the commission  
 11-58 may open the examination to persons in that position with less than  
 11-59 two years' service. If there is still an insufficient number, the  
 11-60 commission may open the examination to persons with at least two  
 11-61 years' experience in the second lower position, in salary, to the  
 11-62 position for which the examination is to be held.

11-63 (d) A firefighter who previously terminated the  
 11-64 firefighter's employment with the department and is subsequently  
 11-65 reemployed by the same department must again meet the two-year  
 11-66 service requirement for eligibility to take a promotional  
 11-67 examination. In determining if a firefighter has met the two-year  
 11-68 service requirement, a fire department may not consider service in  
 11-69 another fire department.

12-1 (e) This section does not prohibit lateral crossover  
 12-2 between classes.

12-3 Sec. 177.061. PROMOTIONAL EXAMINATION PROCEDURE. (a) The  
 12-4 commission shall adopt rules governing promotions and shall hold  
 12-5 promotional examinations to provide eligibility lists for each  
 12-6 classification in the fire department. The examinations shall be  
 12-7 held substantially as prescribed by this section.

12-8 (b) Each eligible promotional candidate shall be given an  
 12-9 identical examination in the presence of the other eligible  
 12-10 promotional candidates.

12-11 (c) The examination must be entirely in writing and may not  
 12-12 in any part consist of an oral interview.

12-13 (d) The examination questions must test the knowledge of the  
 12-14 eligible promotional candidates about information and facts and  
 12-15 must be based on:

12-16 (1) the duties of the position for which the  
 12-17 examination is held;

12-18 (2) material that is of reasonably current publication  
 12-19 and that has been made reasonably available to each member of the  
 12-20 fire department involved in the examination; and

12-21 (3) any study course given by the departmental school  
 12-22 of instruction.

12-23 (e) The examination questions must be taken from the sources  
 12-24 posted as prescribed by Section 177.059(a). Firefighters may  
 12-25 suggest source materials for the examinations.

12-26 (f) The examination questions must be prepared and composed  
 12-27 so that the grading of the examination can be promptly completed  
 12-28 immediately after the examination is over.

12-29 (g) The director is responsible for the preparation and  
 12-30 security of each promotional examination. The fairness of the  
 12-31 competitive promotional examination is the responsibility of the  
 12-32 commission, the director, and each employee involved in the  
 12-33 preparation or administration of the examination.

12-34 (h) A person commits an offense if the person knowingly or  
 12-35 intentionally:

12-36 (1) reveals a part of a promotional examination to an  
 12-37 unauthorized person; or

12-38 (2) receives from any person a part of a promotional  
 12-39 examination for unfair personal gain or advantage.

12-40 (i) An offense under Subsection (h) is a misdemeanor  
 12-41 punishable by a fine of not less than \$1,000, confinement in the  
 12-42 county jail for not more than one year, or both the fine and  
 12-43 confinement.

12-44 Sec. 177.062. PROMOTIONAL EXAMINATION GRADES. (a) The  
 12-45 grading of each promotional examination shall begin when one  
 12-46 eligible promotional candidate completes the examination. As the  
 12-47 eligible promotional candidates finish the examination, the  
 12-48 examinations shall be graded at the examination location and in the  
 12-49 presence of any candidate who wants to remain during the grading.

12-50 (b) Each firefighter is entitled to receive one point for  
 12-51 each year of seniority in that department, with a maximum of 10  
 12-52 points possible.

12-53 (c) The grade that must be placed on the eligibility list  
 12-54 for each firefighter shall be computed by adding the applicant's  
 12-55 points for seniority to the applicant's grade on the written  
 12-56 examination. Each applicant's grade on the written examination is  
 12-57 based on a maximum grade of 100 points and is determined entirely by  
 12-58 the correctness of the applicant's answers to the questions. All  
 12-59 applicants who receive a grade of at least 70 points shall be  
 12-60 determined to have passed the examination. If a tie score occurs,  
 12-61 the commission shall determine a method to break the tie.

12-62 (d) Within 24 hours after a promotional examination is held,  
 12-63 the commission shall post the individual raw test scores on a  
 12-64 bulletin board located in the main lobby of the governing body's  
 12-65 offices.

12-66 Sec. 177.063. REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION.

12-67 (a) On request, each eligible promotional candidate from the fire  
 12-68 department is entitled to examine the person's promotional  
 12-69 examination and answers, the examination grading, and the source

13-1 material for the examination. If dissatisfied, the candidate may  
 13-2 appeal, within five business days, to the commission for review in  
 13-3 accordance with this chapter. In computing this period, a  
 13-4 Saturday, Sunday, or legal holiday is not considered a business  
 13-5 day.

13-6 (b) The eligible promotional candidate may not remove the  
 13-7 examination or copy a question used in the examination.

13-8 Sec. 177.064. PROCEDURE FOR MAKING PROMOTIONAL  
 13-9 APPOINTMENTS. (a) When a vacancy occurs in a nonentry position,  
 13-10 the vacancy shall be filled as prescribed by this section.

13-11 (b) If an eligibility list for the position to be filled  
 13-12 exists on the date the vacancy occurs, the director, on request by  
 13-13 the department head, shall certify to the department head the names  
 13-14 of the three persons having the highest grades on that eligibility  
 13-15 list. The director shall certify the names within 10 days after the  
 13-16 date the director is notified of the vacancy. If fewer than three  
 13-17 names remain on the eligibility list or if only one or two eligible  
 13-18 promotional candidates passed the promotional examination, each  
 13-19 name on the list must be submitted to the department head.

13-20 (c) The director shall submit names from an existing  
 13-21 eligibility list to the department head until the vacancy is filled  
 13-22 or the list is exhausted.

13-23 (d) If an eligibility list does not exist on the date a  
 13-24 vacancy occurs or a new position is created, the commission shall  
 13-25 hold an examination to create a new eligibility list within 90 days  
 13-26 after the date the vacancy occurs or a new position is created.

13-27 (e) If an eligibility list exists on the date a vacancy  
 13-28 occurs, the department head shall fill the vacancy by permanent  
 13-29 appointment from the names on the eligibility list furnished by the  
 13-30 director within 60 days after the date the vacancy occurs. If an  
 13-31 eligibility list does not exist, the department head shall fill the  
 13-32 vacancy by permanent appointment from names on an eligibility list  
 13-33 that the commission shall provide within 90 days after the date the  
 13-34 vacancy occurs.

13-35 (f) Unless the department head has a valid reason for not  
 13-36 appointing the person, the department head shall appoint the  
 13-37 eligible promotional candidate having the highest grade on the  
 13-38 eligibility list.

13-39 (g) A department head that has a valid reason for not  
 13-40 appointing the eligible promotional candidate having the highest  
 13-41 grade shall personally discuss the reason with the person being  
 13-42 bypassed before appointing another person. The department head  
 13-43 shall also file the reason in writing with the commission. On  
 13-44 application of the bypassed eligible promotional candidate, the  
 13-45 reason the department head did not appoint that person is subject to  
 13-46 review by the commission.

13-47 (h) If a person is bypassed, the person's name is returned  
 13-48 to its place on the eligibility list and shall be resubmitted to the  
 13-49 department head if a vacancy occurs.

13-50 (i) A person's name shall be removed from the eligibility  
 13-51 list if:

13-52 (1) the department head:

13-53 (A) refuses three times to appoint the person;

13-54 and

13-55 (B) files the reasons for the refusals in writing  
 13-56 with the commission; and

13-57 (2) the commission does not set aside the refusals.

13-58 (j) Each promotional eligibility list remains in existence  
 13-59 for one year after the date on which the written examination is  
 13-60 given, unless exhausted. At the expiration of the one-year period,  
 13-61 the eligibility list expires and a new examination may be held.

13-62 Sec. 177.065. RECORD OF CERTIFICATION AND APPOINTMENT.  
 13-63 (a) When a person is certified and appointed to a position in the  
 13-64 fire department, the director shall:

13-65 (1) forward the appointed person's record to the  
 13-66 department head;

13-67 (2) forward a copy of the record to the chief  
 13-68 executive; and

13-69 (3) retain a copy in the civil service files.

- 14-1 (b) The record must contain:
- 14-2 (1) the date notice of examination for the position
- 14-3 was posted;
- 14-4 (2) the date the appointed person took the
- 14-5 examination;
- 14-6 (3) the name of each person who conducted the
- 14-7 examination;
- 14-8 (4) the relative position of the appointed person on
- 14-9 the eligibility list;
- 14-10 (5) the date the appointed person took the physical
- 14-11 examination, the name of the examining physician, and whether the
- 14-12 person was accepted or rejected;
- 14-13 (6) the date the request to fill the vacancy was made;
- 14-14 (7) the date the appointed person was notified to
- 14-15 report for duty; and
- 14-16 (8) the date the appointed person's pay is to start.

14-17 (c) If the director intentionally fails to comply with this  
 14-18 section, the commission shall immediately remove the director from  
 14-19 office.

14-20 (d) The director's failure to comply with this section does  
 14-21 not affect the civil service status of an employee.

14-22 Sec. 177.066. TEMPORARY DUTIES IN HIGHER CLASSIFICATION.

14-23 (a) The department head may designate a person from the next lower  
 14-24 classification to temporarily fill a position in a higher  
 14-25 classification.

14-26 (b) A person designated under Subsection (a) is entitled to  
 14-27 the base salary of the higher position plus the person's own  
 14-28 longevity or seniority pay, educational incentive pay, and  
 14-29 certification pay during the time the person performs the duties.

14-30 (c) The temporary performance of the duties of a higher  
 14-31 position by a person who has not been promoted as prescribed by this  
 14-32 chapter may not be construed as a promotion.

14-33 [Sections 177.067-177.100 reserved for expansion]

14-34 SUBCHAPTER C. COMPENSATION

14-35 Sec. 177.101. SALARY. (a) Except as provided by Section  
 14-36 177.066, all firefighters in the same classification are entitled  
 14-37 to the same base salary.

14-38 (b) In addition to the base salary, each firefighter is  
 14-39 entitled to each of the following types of pay, if applicable:

- 14-40 (1) longevity or seniority pay;
- 14-41 (2) educational incentive pay as authorized by Section
- 14-42 177.103;
- 14-43 (3) assignment pay as authorized by Section 177.102;
- 14-44 and
- 14-45 (4) certification pay as authorized by Section
- 14-46 177.103.

14-47 Sec. 177.102. ASSIGNMENT PAY. (a) A governing body may  
 14-48 authorize assignment pay for firefighters who perform specialized  
 14-49 functions.

14-50 (b) The assignment pay is in an amount and is payable under  
 14-51 conditions set by enactment of the governing body and is in addition  
 14-52 to the regular pay received by members of the fire department.

14-53 (c) If the enactment applies equally to each person who  
 14-54 meets the criteria established by the enactment, the enactment may:

- 14-55 (1) provide for payment to each firefighter who meets
- 14-56 training or education criteria for an assignment; or
- 14-57 (2) set criteria that provide for payment only to a
- 14-58 firefighter in a special assignment.

14-59 (d) The head of the fire department is not eligible for the  
 14-60 assignment pay authorized by this section.

14-61 Sec. 177.103. CERTIFICATION AND EDUCATIONAL INCENTIVE PAY.

14-62 (a) If each firefighter in a political subdivision is afforded an  
 14-63 opportunity to qualify for certification, the governing body may  
 14-64 authorize certification pay to those firefighters who meet the  
 14-65 requirements for certification set by the Texas Commission on Fire  
 14-66 Protection.

14-67 (b) If the criteria for educational incentive pay are  
 14-68 clearly established, in writing, and are applied equally to each  
 14-69 firefighter who meets the criteria, the governing body may

15-1 authorize educational incentive pay for each firefighter who has  
 15-2 successfully completed courses at an accredited college or  
 15-3 university.

15-4 (c) The certification pay and educational incentive pay are  
 15-5 in addition to a firefighter's regular pay.

15-6 Sec. 177.104. ACCUMULATION AND PAYMENT OF SICK LEAVE.

15-7 (a) A permanent or temporary firefighter is allowed sick leave  
 15-8 with pay accumulated at the rate of 1-1/4 full working days for each  
 15-9 full month employed in a calendar year for a total of 15 working  
 15-10 days to a person's credit each 12 months.

15-11 (b) A firefighter may accumulate sick leave without limit  
 15-12 and may use the leave if unable to work because of a bona fide  
 15-13 illness. If an ill firefighter exhausts the sick leave and can  
 15-14 conclusively prove that the illness was incurred in the performance  
 15-15 of duties, an extension of sick leave shall be granted.

15-16 (c) A firefighter who leaves the classified service for any  
 15-17 reason is entitled to receive in a lump-sum payment the full amount  
 15-18 of the person's salary for accumulated sick leave if the person has  
 15-19 accumulated not more than 90 days of sick leave. If a firefighter  
 15-20 has accumulated more than 90 days of sick leave, the person's  
 15-21 employer may limit payment to the amount that the person would have  
 15-22 received if the person had been allowed to use 90 days of  
 15-23 accumulated sick leave during the last six months of employment.  
 15-24 The lump-sum payment is computed by compensating the person for the  
 15-25 accumulated time at the highest permanent pay classification for  
 15-26 which the person was eligible during the last six months of  
 15-27 employment. The person is paid for the same period for which the  
 15-28 person would have been paid if the person had taken the sick leave  
 15-29 but does not include additional holidays and any sick leave or  
 15-30 vacation time that the person might have accrued during the 90 days.

15-31 (d) To facilitate the settlement of the accounts of deceased  
 15-32 firefighters, all unpaid compensation, including all accumulated  
 15-33 sick leave, due at the time of death to an active firefighter who  
 15-34 dies as a result of a line-of-duty injury or illness shall be paid  
 15-35 to the persons in the first applicable category in the following  
 15-36 order of priority:

15-37 (1) to the beneficiary or beneficiaries the  
 15-38 firefighter designated in writing to receive the compensation and  
 15-39 filed with the commission before the firefighter's death;

15-40 (2) to the firefighter's widow or widower;

15-41 (3) to the firefighter's child or children and to the  
 15-42 descendants of a deceased child, by representation;

15-43 (4) to the firefighter's parents or to their  
 15-44 survivors; or

15-45 (5) to the properly appointed legal representative of  
 15-46 the firefighter's estate, or in the absence of a representative, to  
 15-47 the person determined to be entitled to the payment under the law of  
 15-48 descent and distribution.

15-49 (e) Payment of compensation to a person in a category in  
 15-50 accordance with Subsection (d) is a bar to recovery by a person in  
 15-51 another category.

15-52 Sec. 177.105. VACATIONS. (a) Each firefighter is entitled  
 15-53 to earn a minimum of 15 working days' vacation leave with pay in  
 15-54 each year.

15-55 (b) In computing the length of time a firefighter may be  
 15-56 absent from work on vacation leave, only those calendar days during  
 15-57 which the person would be required to work if not on vacation may be  
 15-58 counted as vacation days.

15-59 (c) Unless approved by the governing body, a firefighter may  
 15-60 not accumulate vacation leave from year to year.

15-61 [Sections 177.106-177.150 reserved for expansion]

15-62 SUBCHAPTER D. DISCIPLINARY ACTIONS

15-63 Sec. 177.151. CAUSE FOR REMOVAL OR SUSPENSION. A  
 15-64 commission rule prescribing cause for removal or suspension of a  
 15-65 firefighter is not valid unless it involves one or more of the  
 15-66 following grounds:

15-67 (1) conviction of a felony or other crime involving  
 15-68 moral turpitude;

15-69 (2) acts of incompetency;

- 16-1 (3) neglect of duty;
- 16-2 (4) discourtesy to the public or to a fellow employee
- 16-3 while the firefighter is in the line of duty;
- 16-4 (5) acts showing lack of good moral character;
- 16-5 (6) drinking intoxicants while on duty or intoxication
- 16-6 while off duty;
- 16-7 (7) conduct prejudicial to good order;
- 16-8 (8) refusal or neglect to pay just debts;
- 16-9 (9) absence without leave;
- 16-10 (10) shirking duty or cowardice at fires, if
- 16-11 applicable; or
- 16-12 (11) violation of an applicable fire rule or special
- 16-13 order.

16-14 Sec. 177.152. DISCIPLINARY SUSPENSIONS. (a) The head of  
 16-15 the fire department may suspend a firefighter under the department  
 16-16 head's supervision or jurisdiction for the violation of a civil  
 16-17 service rule. The suspension may be for a reasonable period not to  
 16-18 exceed 15 calendar days or for an indefinite period. An indefinite  
 16-19 suspension is equivalent to dismissal from the department.

16-20 (b) If the department head suspends a firefighter, the  
 16-21 department head shall:

16-22 (1) file a written statement with the commission  
 16-23 giving the reasons for the suspension within 120 hours after the  
 16-24 hour of suspension; and

16-25 (2) immediately deliver a copy of the statement in  
 16-26 person to the suspended firefighter.

16-27 (c) The copy of the written statement must inform the  
 16-28 suspended firefighter that if the person wants to appeal to the  
 16-29 commission, the person must file a written appeal with the  
 16-30 commission within 10 days after the date the person receives the  
 16-31 copy of the statement.

16-32 (d) The written statement filed by the department head with  
 16-33 the commission must point out each civil service rule alleged to  
 16-34 have been violated by the suspended firefighter and must describe  
 16-35 the alleged acts of the person that the department head contends are  
 16-36 in violation of the civil service rules. It is not sufficient for  
 16-37 the department head merely to refer to the provisions of the rules  
 16-38 alleged to have been violated.

16-39 (e) If the department head does not specifically point out  
 16-40 in the written statement the act or acts of the firefighter that  
 16-41 allegedly violated the civil service rules, the commission shall  
 16-42 promptly reinstate the person.

16-43 (f) If offered by the department head, the firefighter may  
 16-44 agree in writing to voluntarily accept, with no right of appeal, a  
 16-45 suspension of 16 to 90 calendar days for the violation of a civil  
 16-46 service rule. The firefighter must accept the offer within five  
 16-47 working days after the date the offer is made. If the person  
 16-48 refuses the offer and wants to appeal to the commission, the person  
 16-49 must file a written appeal with the commission within 15 days after  
 16-50 the date the person receives the copy of the written statement of  
 16-51 suspension.

16-52 (g) In the original written statement and charges and in any  
 16-53 hearing conducted under this chapter, the department head may not  
 16-54 complain of an act that occurred earlier than the 180th day  
 16-55 preceding the date the department head suspends the firefighter.  
 16-56 If the act is allegedly related to criminal activity, including the  
 16-57 violation of a federal, state, or local law for which the  
 16-58 firefighter is subject to a criminal penalty, the department head:

16-59 (1) may not complain of an act that is discovered  
 16-60 earlier than the 180th day preceding the date the department head  
 16-61 suspends the firefighter; and

16-62 (2) must allege that the act complained of is related  
 16-63 to criminal activity.

16-64 Sec. 177.153. APPEAL OF DISCIPLINARY SUSPENSION. (a) If a  
 16-65 suspended firefighter appeals the suspension to the commission, the  
 16-66 commission shall hold a hearing and render a decision in writing  
 16-67 within 30 days after the date it receives notice of appeal. The  
 16-68 suspended person and the commission may agree to postpone the  
 16-69 hearing for a definite period.



17-1 (b) In a hearing conducted under this section, the  
 17-2 department head is restricted to the department head's original  
 17-3 written statement and charges, which may not be amended.

17-4 (c) The commission may deliberate the decision in closed  
 17-5 session but may not consider evidence that was not presented at the  
 17-6 hearing. The commission shall vote in open session.

17-7 (d) In its decision, the commission shall state whether the  
 17-8 suspended firefighter is:

17-9 (1) permanently dismissed from the fire department;

17-10 (2) temporarily suspended from the department; or

17-11 (3) restored to the person's former position or status  
 17-12 in the department's classified service.

17-13 (e) If the commission finds that the period of disciplinary  
 17-14 suspension should be reduced, the commission may order a reduction  
 17-15 in the period of suspension. If the suspended firefighter is  
 17-16 restored to the position or class of service from which the person  
 17-17 was suspended, the firefighter is entitled to:

17-18 (1) full compensation for the actual time lost as a  
 17-19 result of the suspension at the rate of pay provided for the  
 17-20 position or class of service from which the person was suspended;  
 17-21 and

17-22 (2) restoration of or credit for any other benefits  
 17-23 lost as a result of the suspension, including sick leave, vacation  
 17-24 leave, and service credit in a retirement system.

17-25 (f) Standard payroll deductions, if any, for retirement and  
 17-26 other benefits restored as provided by Subsection (e) shall be made  
 17-27 from the compensation paid, and the political subdivision or  
 17-28 subdivisions shall make the standard corresponding contributions,  
 17-29 if any, to the retirement system or other applicable benefit  
 17-30 systems.

17-31 (g) The commission may suspend or dismiss a firefighter only  
 17-32 for violation of civil service rules and only after a finding by the  
 17-33 commission of the truth of specific charges against the  
 17-34 firefighter.

17-35 Sec. 177.154. DEMOTIONS. (a) If the head of the fire  
 17-36 department wants a firefighter under the department head's  
 17-37 supervision or jurisdiction to be involuntarily demoted, the  
 17-38 department head may recommend in writing to the commission that the  
 17-39 commission demote the firefighter.

17-40 (b) The department head must:

17-41 (1) include in the recommendation for demotion the  
 17-42 reasons the department head recommends the demotion and a request  
 17-43 that the commission order the demotion; and

17-44 (2) immediately furnish a copy of the recommendation  
 17-45 in person to the affected firefighter.

17-46 (c) The commission may refuse to grant the request for  
 17-47 demotion. If the commission believes that probable cause exists  
 17-48 for ordering the demotion, the commission shall give the  
 17-49 firefighter written notice to appear before the commission for a  
 17-50 public hearing at a time and place specified in the notice. The  
 17-51 commission shall give the notice before the 10th day before the date  
 17-52 the hearing will be held.

17-53 (d) The firefighter is entitled to a full and complete  
 17-54 public hearing, and the commission may not demote a firefighter  
 17-55 without that public hearing.

17-56 (e) A voluntary demotion in which the firefighter has  
 17-57 accepted the terms of the demotion in writing is not subject to this  
 17-58 section.

17-59 Sec. 177.155. PROCEDURES AFTER FELONY INDICTMENT OR  
 17-60 MISDEMEANOR COMPLAINT. (a) If a firefighter is indicted for a  
 17-61 felony or officially charged with the commission of a Class A or B  
 17-62 misdemeanor, the department head may temporarily suspend the person  
 17-63 with or without pay for a period not to extend past the 30th day  
 17-64 after the date of final disposition of the specified felony  
 17-65 indictment or misdemeanor complaint.

17-66 (b) The department head shall notify the suspended  
 17-67 firefighter in writing that:

17-68 (1) the person is being temporarily suspended for a  
 17-69 specific period with or without pay; and

18-1 (2) the temporary suspension is not intended to  
18-2 reflect an opinion on the merits of the indictment or complaint.

18-3 (c) If the act directly related to the felony indictment or  
18-4 misdemeanor complaint occurred or was discovered on or after the  
18-5 180th day before the date of the indictment or complaint, the  
18-6 department head may, within 30 days after the date of final  
18-7 disposition of the indictment or complaint, bring a charge against  
18-8 the firefighter for a violation of civil service rules.

18-9 (d) A firefighter indicted for a felony or officially  
18-10 charged with the commission of a Class A or B misdemeanor who has  
18-11 also been charged by the department head with civil service  
18-12 violations directly related to the indictment or complaint may  
18-13 delay the civil service hearing until not later than the 30th day  
18-14 after the date of the final disposition of the indictment or  
18-15 complaint.

18-16 (e) If the department head temporarily suspends a  
18-17 firefighter under this section and the firefighter is not found  
18-18 guilty of the criminal charge, the firefighter may appeal to the  
18-19 commission or to a hearing examiner for recovery of back pay. The  
18-20 commission or hearing examiner may award all or part of the back pay  
18-21 or reject the appeal.

18-22 (f) Acquittal or dismissal of an indictment or a complaint  
18-23 does not mean that a firefighter has not violated civil service  
18-24 rules and does not negate the charges that may have been or may be  
18-25 brought against the firefighter by the department head.

18-26 (g) Conviction of a felony is cause for indefinite  
18-27 suspension, and conviction of a Class A or B misdemeanor may be  
18-28 cause for disciplinary action or indefinite suspension.

18-29 (h) The department head may, after the 180-day period  
18-30 following the date of the discovery of the act by the department,  
18-31 order an indefinite suspension based on an act classified as a  
18-32 felony or a Class A or B misdemeanor if the department head  
18-33 considers delay to be necessary to protect a criminal investigation  
18-34 of the person's conduct. If the department head intends to order an  
18-35 indefinite suspension after the 180-day period, the department head  
18-36 must file with the attorney general a statement describing the  
18-37 criminal investigation and its objectives within 180 days after the  
18-38 date the act complained of occurred.

18-39 Sec. 177.156. HEARING EXAMINERS. (a) In addition to the  
18-40 other notice requirements prescribed by this chapter, the letter of  
18-41 disciplinary action issued to a firefighter must state that:

18-42 (1) in an appeal of an indefinite suspension, a  
18-43 suspension, a promotional passover, or a recommended demotion, the  
18-44 appealing firefighter may elect to appeal to an independent third  
18-45 party hearing examiner instead of to the commission; and

18-46 (2) if the firefighter elects to appeal to a hearing  
18-47 examiner, the person waives all rights to appeal to a district court  
18-48 except as provided by Subsection (j).

18-49 (b) To exercise the choice of appealing to a hearing  
18-50 examiner, the appealing firefighter must submit to the director a  
18-51 written request as part of the original notice of appeal required  
18-52 under this chapter stating the person's decision to appeal to an  
18-53 independent third party hearing examiner.

18-54 (c) The hearing examiner's decision is final and binding on  
18-55 all parties. If the firefighter decides to appeal to an independent  
18-56 third party hearing examiner, the person automatically waives all  
18-57 rights to appeal to a district court except as provided by  
18-58 Subsection (j).

18-59 (d) If the appealing firefighter chooses to appeal to a  
18-60 hearing examiner, the firefighter and the department head, or their  
18-61 designees, shall first attempt to agree on the selection of an  
18-62 impartial hearing examiner. If the parties do not agree on the  
18-63 selection of a hearing examiner within 10 days after the date the  
18-64 appeal is filed, the director shall immediately request a list of  
18-65 seven qualified neutral arbitrators from the American Arbitration  
18-66 Association or the Federal Mediation and Conciliation Service, or  
18-67 their successors in function. The firefighter and the department  
18-68 head, or their designees, may agree on one of the seven neutral  
18-69 arbitrators on the list. If they do not agree within five working

19-1 days after the date they received the list, each party or the  
 19-2 party's designee shall alternate striking a name from the list, and  
 19-3 the name remaining is the hearing examiner. The parties or their  
 19-4 designees shall agree on a date for the hearing.

19-5 (e) The appeal hearing shall begin as soon as the hearing  
 19-6 examiner can be scheduled. If the hearing examiner cannot begin the  
 19-7 hearing within 45 calendar days after the date of selection, the  
 19-8 firefighter may, within two days after learning of that fact, call  
 19-9 for the selection of a new hearing examiner using the procedure  
 19-10 prescribed by Subsection (d).

19-11 (f) In each hearing conducted under this section, the  
 19-12 hearing examiner has the same duties and powers as the commission,  
 19-13 including the right to issue subpoenas.

19-14 (g) In a hearing conducted under this section, the parties  
 19-15 may agree to an expedited hearing procedure. Unless otherwise  
 19-16 agreed by the parties, in an expedited procedure, the hearing  
 19-17 examiner shall render a decision on the appeal within 10 days after  
 19-18 the date the hearing ends.

19-19 (h) In an appeal that does not involve an expedited hearing  
 19-20 procedure, the hearing examiner shall make a reasonable effort to  
 19-21 render a decision on the appeal within 30 days after the date the  
 19-22 hearing ends or the briefs are filed. The hearing examiner's  
 19-23 inability to meet the time requirements imposed by this section  
 19-24 does not affect the hearing examiner's jurisdiction, the validity  
 19-25 of the disciplinary action, or the hearing examiner's final  
 19-26 decision.

19-27 (i) The hearing examiner's fees and expenses are shared  
 19-28 equally by the appealing firefighter and the department. The costs  
 19-29 of a witness are paid by the party who calls the witness.

19-30 (j) A district court may hear an appeal of a hearing  
 19-31 examiner's award only on the grounds that the hearing examiner was  
 19-32 without jurisdiction or exceeded the hearing examiner's  
 19-33 jurisdiction or that the order was procured by fraud, collusion, or  
 19-34 other unlawful means. An appeal must be brought in the district  
 19-35 court having jurisdiction in a political subdivision served by the  
 19-36 fire department.

19-37 [Sections 177.157-177.200 reserved for expansion]

#### 19-38 SUBCHAPTER E. LEAVES OF ABSENCE

##### 19-39 Sec. 177.201. LEAVES OF ABSENCE; RESTRICTION PROHIBITED.

19-40 (a) If a sufficient number of firefighters are available to  
 19-41 perform the normal functions of the fire department, a firefighter  
 19-42 may not be refused a reasonable leave of absence without pay to  
 19-43 attend a fire school, convention, or meeting if the purpose of the  
 19-44 school, convention, or meeting is to secure a more efficient  
 19-45 department or better working conditions for department personnel.

19-46 (b) A rule that affects a firefighter's constitutional  
 19-47 right to appear before or to petition the legislature may not be  
 19-48 adopted.

19-49 Sec. 177.202. MILITARY LEAVE OF ABSENCE. (a) On written  
 19-50 application of a firefighter, the commission shall grant the person  
 19-51 a military leave of absence without pay to enable the person to  
 19-52 enter a branch of the United States military service. The leave of  
 19-53 absence may not exceed the period of compulsory military service or  
 19-54 the basic minimum enlistment period for the branch of service the  
 19-55 firefighter enters.

19-56 (b) The commission shall grant to a firefighter a leave of  
 19-57 absence for initial training or annual duty in the armed forces  
 19-58 reserves or the National Guard.

19-59 (c) While a firefighter who received a military leave of  
 19-60 absence serves in the military, the commission shall fill the  
 19-61 person's position in the department in accordance with this  
 19-62 chapter. The firefighter who fills the position is subject to  
 19-63 replacement by the person who received the military leave at the  
 19-64 time the person returns to active duty in the department.

19-65 (d) On termination of active military service, a  
 19-66 firefighter who received a military leave of absence under this  
 19-67 section is entitled to be reinstated to the position that the person  
 19-68 held in the department at the time the leave of absence was granted  
 19-69 if the person:

20-1 (1) receives an honorable discharge;  
 20-2 (2) remains physically and mentally fit to discharge  
 20-3 the duties of that position; and

20-4 (3) makes an application for reinstatement within 90  
 20-5 days after the date the person is discharged from military service.

20-6 (e) On reinstatement, the firefighter shall receive full  
 20-7 seniority credit for the time spent in the military service.

20-8 (f) If the reinstatement of a firefighter who received a  
 20-9 military leave of absence causes that person's replacement to be  
 20-10 returned to a lower position in grade or compensation, the replaced  
 20-11 person has a preferential right to a subsequent appointment or  
 20-12 promotion to the same or a similar position from which the person  
 20-13 was demoted. This preferential right has priority over an  
 20-14 eligibility list and is subject to the replaced person remaining  
 20-15 physically and mentally fit to discharge the duties of that  
 20-16 position.

20-17 Sec. 177.203. LEAVE OF ABSENCE FOR LINE-OF-DUTY ILLNESS OR  
 20-18 INJURY. (a) A fire department shall provide to a firefighter a  
 20-19 leave of absence for an illness or injury related to the person's  
 20-20 line of duty. The leave is with full pay for a period commensurate  
 20-21 with the nature of the illness or injury. If necessary, the leave  
 20-22 shall continue for at least one year.

20-23 (b) At the end of the one-year period, the governing body  
 20-24 may extend the line-of-duty illness or injury leave at full or  
 20-25 reduced pay. If the firefighter's salary is reduced below 60  
 20-26 percent of the person's regular monthly salary and the fire  
 20-27 department has or participates in a pension fund, the person may  
 20-28 retire on pension until able to return to duty.

20-29 (c) If pension benefits are not available to a firefighter  
 20-30 who is temporarily disabled by a line-of-duty injury or illness and  
 20-31 if the year at full pay and any extensions granted by the governing  
 20-32 body have expired, the firefighter may use accumulated sick leave,  
 20-33 vacation time, and other accrued benefits before the person is  
 20-34 placed on temporary leave.

20-35 (d) If a firefighter is temporarily disabled by an injury or  
 20-36 illness that is not related to the person's line of duty, the person  
 20-37 may use all sick leave, vacation time, and other accumulated time  
 20-38 before the person is placed on temporary leave.

20-39 (e) After recovery from a temporary disability, a  
 20-40 firefighter shall be reinstated at the same rank and with the same  
 20-41 seniority the person had before going on temporary leave. Another  
 20-42 firefighter may voluntarily do the work of an injured firefighter  
 20-43 until the person returns to duty.

20-44 Sec. 177.204. REAPPOINTMENT AFTER RECOVERY FROM  
 20-45 DISABILITY. With the commission's approval and if otherwise  
 20-46 qualified, a firefighter who has been certified by a physician  
 20-47 selected by the person's pension fund as having recovered from a  
 20-48 disability for which the person has been receiving a monthly  
 20-49 disability pension is eligible for reappointment to the classified  
 20-50 position that the person held on the date the person qualified for  
 20-51 the monthly disability pension.

20-52 [Sections 177.205-177.250 reserved for expansion]

#### 20-53 SUBCHAPTER F. MISCELLANEOUS PROVISIONS

20-54 Sec. 177.251. DETERMINATION OF PHYSICAL AND MENTAL FITNESS.

20-55 (a) If a question arises as to whether a firefighter is  
 20-56 sufficiently physically or mentally fit to continue the person's  
 20-57 duties, the firefighter shall submit to the commission a report  
 20-58 from the person's personal physician, psychiatrist, or  
 20-59 psychologist, as appropriate.

20-60 (b) If the commission, the department head, or the  
 20-61 firefighter questions the report, the commission shall appoint a  
 20-62 physician, psychiatrist, or psychologist, as appropriate, to  
 20-63 examine the firefighter and to submit a report to the commission,  
 20-64 the department head, and the firefighter.

20-65 (c) If the report of the appointed physician, psychiatrist,  
 20-66 or psychologist, as appropriate, disagrees with the report of the  
 20-67 firefighter's personal physician, psychiatrist, or psychologist,  
 20-68 as appropriate, the commission shall appoint a three-member board  
 20-69 composed of a physician, a psychiatrist, and a psychologist, or any

21-1 combination, as appropriate, to examine the firefighter. The  
 21-2 board's findings as to the person's fitness for duty shall determine  
 21-3 the issue.

21-4 (d) The firefighter shall pay the cost of the services of  
 21-5 the person's personal physician, psychiatrist, or psychologist, as  
 21-6 appropriate. The fire department shall pay all other costs.

21-7 Sec. 177.252. FORCE REDUCTION AND REINSTATEMENT LIST.

21-8 (a) If the governing body vacates or abolishes a fire department  
 21-9 position, the firefighter who holds that position shall be demoted  
 21-10 to the position immediately below the vacated or abolished  
 21-11 position. If one or more positions of equal rank are vacated or  
 21-12 abolished, the firefighters who have the least seniority in a  
 21-13 position shall be demoted to the position immediately below the  
 21-14 vacated or abolished position.

21-15 (b) If a firefighter is demoted under Subsection (a) without  
 21-16 charges being filed against the person for violation of civil  
 21-17 service rules, the firefighter shall be placed on a position  
 21-18 reinstatement list in order of seniority. If the vacated or  
 21-19 abolished position is filled or re-created within one year after  
 21-20 the date it was vacated or abolished, the position must be filled  
 21-21 from the reinstatement list. Appointments from the reinstatement  
 21-22 list shall be made in order of seniority. A person who is not on the  
 21-23 list may not be appointed to the position during the one-year period  
 21-24 until the reinstatement list is exhausted.

21-25 (c) If a position in the lowest classification is abolished  
 21-26 or vacated and a firefighter must be dismissed from the department,  
 21-27 the firefighter with the least seniority shall be dismissed.

21-28 (d) If a firefighter is dismissed under Subsection (c)  
 21-29 without charges being filed against the person for violation of  
 21-30 civil service rules, the firefighter shall be placed on a  
 21-31 reinstatement list in order of seniority. Appointments from the  
 21-32 reinstatement list shall be made in order of seniority. Until the  
 21-33 reinstatement list is exhausted, a person may not be appointed from  
 21-34 an eligibility list. When a person has been on a reinstatement list  
 21-35 for three years, the person shall be dropped from the list but shall  
 21-36 be restored to the list at the request of the commission.

21-37 Sec. 177.253. POLITICAL ACTIVITIES. (a) While in uniform  
 21-38 or on active duty, a firefighter may not take an active part in  
 21-39 another person's political campaign for an elective position of the  
 21-40 political subdivision.

21-41 (b) For purposes of this section, a person takes an active  
 21-42 part in a political campaign if the person:

21-43 (1) makes a political speech;  
 21-44 (2) distributes a card or other political literature;  
 21-45 (3) writes a letter;  
 21-46 (4) signs a petition;  
 21-47 (5) actively and openly solicits votes; or  
 21-48 (6) makes public derogatory remarks about a candidate  
 21-49 for the elective position.

21-50 (c) A firefighter may not be:

21-51 (1) required to contribute to a political fund or to  
 21-52 render a political service to a person or political party; or  
 21-53 (2) removed, reduced in classification or salary, or  
 21-54 otherwise prejudiced for refusing to contribute to a political fund  
 21-55 or to render a political service.

21-56 (d) An official of the political subdivision who attempts to  
 21-57 violate Subsection (c) violates this chapter.

21-58 (e) Except as expressly provided by this section, the  
 21-59 commission or the governing body may not restrict a firefighter's  
 21-60 right to engage in a political activity.

21-61 Sec. 177.254. STRIKE PROHIBITION. (a) A firefighter may  
 21-62 not engage in a strike against the fire department.

21-63 (b) In addition to the penalty prescribed by Section  
 21-64 177.016, if a firefighter is convicted of an offense for violating  
 21-65 this section, the person shall be automatically released and  
 21-66 discharged from the fire department. After the person is  
 21-67 discharged from the department, the person may not receive any pay  
 21-68 or compensation from public funds used to support the fire  
 21-69 department.

22-1 Sec. 177.255. UNLAWFUL RESIGNATION OR RETIREMENT. (a) A  
22-2 person commits an offense if the person accepts money or anything of  
22-3 value from another person in return for retiring or resigning from  
22-4 the person's civil service position.

22-5 (b) A person commits an offense if the person gives money or  
22-6 anything of value to another person in return for the other person's  
22-7 retirement or resignation from the person's civil service position.

22-8 (c) An offense under this section is a Class A misdemeanor.

22-9 Sec. 177.256. PERSONNEL FILE. (a) The director or the  
22-10 director's designee shall maintain a personnel file on each  
22-11 firefighter. The personnel file must contain any letter,  
22-12 memorandum, or document relating to:

22-13 (1) a commendation, congratulation, or honor bestowed  
22-14 on the firefighter by a member of the public or by the employing  
22-15 department for an action, duty, or activity that relates to the  
22-16 person's official duties;

22-17 (2) any misconduct by the firefighter if the  
22-18 misconduct resulted in disciplinary action by the employing  
22-19 department in accordance with this chapter; and

22-20 (3) the periodic evaluation of the firefighter by a  
22-21 supervisor.

22-22 (b) A letter, memorandum, or document relating to alleged  
22-23 misconduct by the firefighter may not be placed in the person's  
22-24 personnel file if the employing department determines there is  
22-25 insufficient evidence to sustain the charge of misconduct.

22-26 (c) A letter, memorandum, or document relating to  
22-27 disciplinary action taken against the firefighter or to alleged  
22-28 misconduct by the firefighter that is placed in the person's  
22-29 personnel file as provided by Subsection (a)(2) shall be removed  
22-30 from the employee's file if the commission finds that:

22-31 (1) the disciplinary action was taken without just  
22-32 cause; or

22-33 (2) the charge of misconduct was not supported by  
22-34 sufficient evidence.

22-35 (d) If a negative letter, memorandum, document, or other  
22-36 notation of negative impact is included in a firefighter's  
22-37 personnel file, the director or the director's designee shall,  
22-38 within 30 days after the date of the inclusion, notify the affected  
22-39 firefighter. The firefighter may, on or before the 15th day after  
22-40 the date of receipt of the notification, file a written response to  
22-41 the negative letter, memorandum, document, or other notation.

22-42 (e) The firefighter is entitled, on request, to a copy of  
22-43 any letter, memorandum, or document placed in the person's  
22-44 personnel file. The fire department may charge the firefighter a  
22-45 reasonable fee not to exceed actual cost for any copies provided  
22-46 under this subsection.

22-47 (f) The director or the director's designee may not release  
22-48 any information contained in a firefighter's personnel file without  
22-49 first obtaining the person's written permission, unless the release  
22-50 of the information is required by law.

22-51 (g) A fire department may maintain a personnel file on a  
22-52 firefighter employed by the department for the department's use,  
22-53 but the department may not release any information contained in the  
22-54 department file to any agency or person requesting information  
22-55 relating to a firefighter, except to the firefighter or the  
22-56 firefighter's designee. The department shall refer to the director  
22-57 or the director's designee a person or agency that requests  
22-58 information that is maintained in the firefighter's personnel file.

22-59 SECTION 3. This Act takes effect September 1, 2003.

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