

BILL ANALYSIS

Senate Research Center

S.B. 1433
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Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

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

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

S.B. 1433 provides for the right of firefighters to petition and call for an election to adopt the provisions of Chapter 143, Local Government Code, as if the political subdivision were a municipality with a population of greater than 10,000.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Requires the department head suspending or dismissing a firefighter to take certain steps within 120 hours after the hour of suspension or dismissal.

(d) Requires the written statement filed by the department head with the governing body under Subsection (c)(1) to list each fire department or emergency services employer rule allegedly violated by the firefighter and specifically describe the actions of the firefighter that allegedly violate the rule.

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

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

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

(c) Authorizes the governing body of the emergency services employer to deliberate in closed session after a hearing conducted under this section. Prohibits the governing body, in reaching its decision after the hearing, from considering evidence that was not presented at the hearing. Requires the governing body to vote on the decision regarding an appeal under this section in open session.

(d) Requires the governing body of an emergency services employer to state certain information in its decision.

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

(f) Sets forth certain entitlements for a firefighter who is reinstated to the position or class of service from which the firefighter was suspended or dismissed.

(g) Sets forth certain requirements for the emergency services employer.

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

Sec. 179.008. APPEAL PROCEDURE. (a) Sets forth certain requirements for a notice of appeal filed under Section 179.007.

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

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

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

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

(f) Authorizes only the evidence submitted at the hearing to be considered by the governing body of the emergency services employer.

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

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

Sec. 179.009. HEARING EXAMINER. (a) Authorizes a firefighter to choose to appeal to a hearing examiner instead of the governing body of the emergency services employer. Requires the appealing firefighter to submit to the governing body a written request as part of the original notice of appeal required under this chapter stating the person's decision to appeal to an independent third party hearing examiner.

(b) Provides the hearing examiner's decision is final and binding on all parties. Provides that if the firefighter decides to appeal to an independent third party

hearing examiner, the person automatically waives all rights to appeal to a district court except as provided by Section 179.010(e).

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

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

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

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

Sec. 179.010. DISTRICT COURT PETITION. (a) Authorizes a firefighter who is dissatisfied with the decision of the governing body of the emergency services employer to file a petition in a district court asking that the decision be set aside. Requires the petition to be filed not later than the 10th day after the date the governing body's final decision is sent to the firefighter by certified mail or personally received by the firefighter or by the firefighter's designee.

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

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

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

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

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

SECTION 2. Effective date: September 1, 2005.