

By: Rodriguez

H.B. No. 2054

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

(1) an emergency services district that:

(A) was created under Chapter 775, Health and Safety Code;

(B) has a population of 30,000 or more; and

(C) except as provided by Subsection (b)(1), provides emergency medical services for a municipality whose firefighters are covered by Chapter 174; and

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

(b) This chapter does not apply to:

(1) a fire department of and firefighters employed by an emergency services district that provides medical services for a municipality with a population of more than one million that has adopted Chapter 174; or

1 (2) a volunteer fire department or the members or
2 employees of a volunteer fire department that is operating under a
3 contract with an emergency services district.

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

10 (d) If this chapter applies to the fire department of and
11 firefighters employed by an emergency services district and the
12 population of the district decreases to less than 30,000, the
13 applicability of this chapter in relation to the district is not
14 affected.

15 Sec. 179.002. DEFINITIONS. In this chapter:

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

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

22 Sec. 179.003. PAYROLL DEDUCTIONS; LONGEVITY PAY;
23 CLASSIFICATION PAY; PENALTY. (a) Sections 141.008, 141.032,
24 141.033, and 141.034 apply to a firefighter employed by an
25 emergency services employer.

26 (b) The penalty under Section 141.035 applies to a person
27 who is in charge of the fire department of an emergency services

1 employer or who is responsible for setting the compensation for
2 firefighters employed by an emergency services employer in
3 accordance with this section.

4 Sec. 179.004. ASSISTANCE; BENEFITS; WORKING CONDITIONS;
5 PENALTY. Sections 142.001, 142.0013, 142.0015, 142.0016, 142.004,
6 142.005, 142.006, 142.008, and 142.009 apply to a firefighter
7 employed by an emergency services employer.

8 Sec. 179.005. EXCLUSIVE APPEAL PROCEDURE. This chapter
9 provides the exclusive procedure for the administration and appeal
10 of a disciplinary action against a firefighter covered by this
11 chapter.

12 Sec. 179.006. DISCIPLINARY SUSPENSION OR DISMISSAL.

13 (a) The head of a fire department for just cause may suspend or
14 dismiss from employment a firefighter for violating a rule of the
15 fire department or of the emergency services employer. A rule
16 described by this subsection must have been adopted by the
17 governing body of the emergency services employer.

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

21 (c) If a department head suspends or dismisses a
22 firefighter, the department head shall, within 120 hours after the
23 hour of suspension or dismissal:

24 (1) file a written statement of the reasons for the
25 suspension or dismissal with the governing body of the emergency
26 services employer; and

27 (2) deliver in person to the firefighter a copy of the

1 statement described by Subdivision (1) and a written statement that
2 if the firefighter wishes to appeal the suspension or dismissal,
3 the firefighter must file a written notice of appeal with the
4 governing body not later than the 10th day after the date the
5 firefighter receives the copy of the statement described by
6 Subdivision (1) and the statement described by this subdivision.

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

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

15 Sec. 179.007. APPEAL OF DISCIPLINARY SUSPENSION OR
16 DISMISSAL. (a) If a firefighter files a notice of appeal of the
17 firefighter's suspension or dismissal from employment with the
18 governing body of the emergency services employer, the governing
19 body shall hold a hearing on the appeal and render a written
20 decision not later than the 30th day after the date the governing
21 body receives the notice of appeal from the firefighter. The
22 firefighter and the governing body may agree to postpone the
23 hearing for a definite period.

24 (b) In a hearing conducted under this section, the
25 department head may only allege actions and rule violations
26 included in the department head's original written statement
27 submitted to the governing body of the emergency services employer

1 under Section 179.006(c)(1).

2 (c) The governing body of the emergency services employer
3 may deliberate in closed session after a hearing conducted under
4 this section. In reaching its decision after the hearing, the
5 governing body may not consider evidence that was not presented at
6 the hearing. The governing body must vote on the decision regarding
7 an appeal under this section in open session.

8 (d) In its decision, the governing body of an emergency
9 services employer shall state whether the firefighter is:

10 (1) permanently dismissed from employment with the
11 fire department;

12 (2) temporarily suspended from employment with the
13 fire department; or

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

16 (e) If in a decision rendered under this section the
17 governing body of the emergency services employer finds that the
18 period of disciplinary suspension should be reduced, the governing
19 body may order a reduction in the period of suspension.

20 (f) A firefighter who is reinstated to the position or class
21 of service from which the firefighter was suspended or dismissed is
22 entitled to:

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

26 (2) restoration of or credit for any other benefits
27 lost as a result of the suspension or dismissal, including sick

1 leave, vacation leave, and service credit in a retirement system.

2 (g) The emergency services employer shall:

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

6 (2) make any of the employer's standard corresponding
7 contributions to the retirement system or other applicable benefit
8 system.

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

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

16 (1) include the basis for the appeal and a request for
17 a hearing; and

18 (2) contain a statement denying the truth of the
19 charge as made, a statement taking exception to the legal
20 sufficiency of the charge, a statement alleging that the
21 recommended action does not fit the offense or alleged offense, or a
22 combination of these statements.

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

1 held in public.

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

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

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

18 (f) Only the evidence submitted at the hearing may be
19 considered by the governing body of the emergency services
20 employer.

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

23 (h) The governing body of the emergency services employer
24 may designate three persons who are qualified voters within the
25 employer's jurisdiction to serve as an appeal panel to hear and
26 decide the appeal in lieu of the governing body. The appeal panel
27 has the same powers and duties related to the appeal as the

1 governing body, including the power to issue subpoenas.

2 Sec. 179.009. HEARING EXAMINER. (a) A firefighter may
3 choose to appeal to a hearing examiner instead of the governing body
4 of the emergency services employer. The appealing firefighter must
5 submit to the governing body a written request as part of the
6 original notice of appeal required under this chapter stating the
7 person's decision to appeal to an independent third party hearing
8 examiner.

9 (b) The hearing examiner's decision is final and binding on
10 all parties. If the firefighter decides to appeal to an independent
11 third party hearing examiner, the person automatically waives all
12 rights to appeal to a district court except as provided by Section
13 179.010(e).

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

1 designees shall agree on a date for the hearing.

2 (d) The appeal hearing shall begin as soon as the hearing
3 examiner can be scheduled. If the firefighter receives notice that
4 the hearing examiner cannot begin the hearing within 45 days after
5 the date of selection, the firefighter, within two days after
6 receiving the notice, may call for the selection of a new hearing
7 examiner using the procedure prescribed by Subsection (c).

8 (e) In a hearing conducted under this section, the hearing
9 examiner has the same duties and powers as the governing body of the
10 emergency services employer, including the power to issue
11 subpoenas.

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

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

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

22 (2) personally received by the firefighter or by the
23 firefighter's designee.

24 (b) An appeal under this section is by trial de novo. The
25 district court may grant the appropriate legal or equitable relief
26 necessary to carry out the purposes of this chapter. The relief may
27 include reinstatement with back pay if an order of suspension or

1 dismissal is set aside.

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

5 (d) If the court finds in favor of the firefighter, the
6 court shall order the emergency services employer to pay lost wages
7 to the firefighter.

8 (e) A district court may hear an appeal of a hearing
9 examiner's award only on the grounds that the hearing examiner was
10 without jurisdiction or exceeded the examiner's jurisdiction or
11 that the order was procured by fraud, collusion, or other unlawful
12 means.

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

17 SECTION 2. This Act takes effect September 1, 2009.