

- SUBJECT:** Providing employee benefits to certain non-municipal firefighters
- COMMITTEE:** County Affairs — committee substitute recommended
- VOTE:** 5 ayes — R. Allen, Farabee, Naishtat, Olivo, Otto  
0 nays  
4 absent — W. Smith, Casteel, Coleman, Laney
- SENATE VOTE:** On final passage, May 5 — 31 - 0, on Local and Uncontested Calendar
- WITNESSES:** *(On House companion bill, HB 3028 by Rodriguez:)*  
For — Michael Anderson, Pflugerville Professional Fire Fighters' Association Local 4137; Eric Carlson, Hudson Bend Fire Fighters' Association; Mike Higgins, Texas State Association of Fire Fighters  
*(Registered, but did not testify: Steve Bresnen, Texas State Association of Fire Fighters; Wayne DeLanghe and Ronald Harrell, San Antonio Fire Dept. Local 624; Nicholas Perkins, Pflugerville Professional Fire Fighters' Association; Peter Perry and Thomas Thorp, Pflugerville Professional Fire Fighters' Association Local 4137; Mark Seale, Texas State Association of Firefighters; Johnny Villarreal, Houston Fire Fighters Local 341)*  
  
Against — John Carlton, Texas State Association of Fire and Emergency Districts, Travis County Emergency Services Dist. 2; Howard Katz, Harris County ESD No. 9; Don Smith, Travis County ESD No. 4  
*(Registered, but did not testify: Glenn Hastings, Spring Volunteer Fire Dept. ESD No. 7 Harris County; Shanna Igo, Texas Municipal League; Fred Windisch, Ponderosa Volunteer Fire Association Inc.)*
- BACKGROUND:** Municipal firefighters, under Local Government Code, ch. 143, are part of a municipal civil service that provides uniform and comprehensive benefits to them. Some emergency service districts (ESDs) employ full-time firefighters, but no civil service system applies to these firefighters, and their wages and benefits vary among districts.

DIGEST:

CSSB 1433 would expand a civil service system to firefighters who were not volunteers and who were employed by:

- an emergency service district, created under Health and Safety Code, ch. 775, with a population of 30,000 or more; and
- a department created by an interlocal agreement between two or more political subdivisions.

The bill would entitle these firefighters to the same benefits awarded to municipal firefighters under a municipal civil service system, including provisions governing payroll deductions, longevity and classification pay, comprehensive benefits, and working conditions.

It would provide for disciplinary action against these fire fighters for rule infractions and create an appeals process for such actions. Disciplinary action would include suspension or dismissal by the head of the department. A fire fighter could be suspended for up to 15 days or entirely dismissed from the department. Within 120 days of the suspension or dismissal, the department head would have to file a written statement with the appropriate governing body explaining the actions, a copy of which would be delivered to the fire fighter. At that time the fire fighter also would receive a written statement from the department head explaining which rule was violated and the appeals procedure.

The appeals procedure would require the governing body to hold a hearing within 30 days from when the firefighter filed an appeal and to decide whether to uphold the disciplinary action, reduce the action, or reinstate the fire fighter. Only violations included in the department head's written statement could be deliberated and only evidence presented at the hearing could be considered in a closed session upon the hearing's conclusion.

A fire fighter would be entitled to counsel during an appeal. The governing body could issue subpoenas, and the fire fighter also could request the governing body to issue certain subpoenas up to 10 days prior to the hearing. The appeal would be heard by the governing body or by three qualified voters designated by the governing body.

The bill would allow a fire fighter who was unsatisfied with the appeals decision to file a petition within 10 days of the decision for appeal in district court. This appeal would be a retrial of the decision and could require the court to award the fire fighter back pay. The court also would

award attorney's fees to the prevailing party. When a court favored the fire fighter, the employer would pay lost wages to the fire fighter.

A fire fighter also could choose to appeal to a hearing examiner rather than the governing body, but a resulting decision only could be appealed in district court when the examiner was without jurisdiction or exceeded his or her jurisdiction or when the decision was based on fraud, collusion, or other unlawful means.

The bill would take effect September 1, 2005.

**SUPPORTERS  
SAY:**

SB 1433 would reward ESD firefighters for their invaluable contribution to communities across Texas with benefits comparable to those received by municipal firefighters. Municipal and non-municipal fire fighters receive the same training, meet the same qualifications, and equally risk their lives to protect people and property. However, they do not receive equal compensation and benefits, which this bill would remedy.

The bill only would apply to districts with populations of 30,000 or more, which would include four EMS districts in Harris and Travis counties. These districts have ample revenue to cover improved fire fighter benefits. It would not apply to smaller districts that could not afford to provide the benefits.

The bill would allow ESDs to administer benefits without the excessive costs of holding public elections.

The bill's provisions on disciplinary action toward fire fighters who violated rules and the subsequent hearings would hold employers and fire fighters accountable for their actions and also safeguard their due process rights.

**OPPONENTS  
SAY:**

While firefighters across Texas should be entitled to improved benefits, ESDs simply lack the financial resources to implement them. SB 1433 could force ESDs to reduce their numbers of fire fighters or delay the purchase of new safety equipment in order to comply with the bill, especially in years when revenue is static. Municipalities receive far greater revenues from property taxes and general funds to provide benefits without straining their budgets. ESDs cannot afford a civil service system, and the bill ultimately could reduce their capacities to serve their districts.

Receiving benefits is a financial matter, not a matter of principle. Many special district employees work within non-civil service systems because the districts lack the financial resources.

Because the bill would not require an election to approve the adoption of a civil service system, the ESD would be given discretionary decision making authority. Voters should decide on how to spend their taxes.

NOTES:

The committee substitute would not apply to volunteer fire fighters and departments that operate under contract with emergency services districts. It would not require an election to adopt or repeal a municipal civil service system for certain fire fighter departments. The substitute also would provide disciplinary suspension and dismissal of fire fighters and the corresponding appeals process for fire fighters who were suspended or dismissed.

The companion bill, HB 3028 by Rodriguez, was left pending on April 20 in the County Affairs Committee.