

BILL ANALYSIS

Senate Research Center

C.S.S.B. 911
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Committee Report (Substituted)

DIGEST AND PURPOSE

Traditionally, paid firefighters have been employed by municipalities. However, over the last ten years, this has changed due to the creation of municipal utility districts, fire districts, airport districts and port authorities. C.S.S.B. 911 creates benefits for non-municipal and non-county firefighters similar to those applying to cities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Firefighters Civil Service Commission in SECTION 2 (Section 177.009, Local Government Code and Section 177.061, Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 5, Local Government Code, by adding Chapter 176, as follows:

CHAPTER 176. FIREFIGHTERS EMPLOYED BY CERTAIN LOCAL GOVERNMENTS

Sec. 176.001. **APPLICABILITY.** Provides that this chapter does not apply to a municipality or a county.

Sec. 176.002. **DEFINITIONS.** Defines “member of a fire department” and “political subdivision.”

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

(b) Provides that participation in the payroll deduction program by a member of the fire department is voluntary.

(c) Requires a member of the fire department's written request to meet certain criteria.

(d) Prohibits the amount deducted each month from exceeding the amount stated in the written request. Authorizes the governing body of a political subdivision, however, to impose and collect an administrative fee from each participating member of the fire department in addition to the membership dues withheld. Requires the fee to be in an amount reasonable and necessary to cover the administrative costs of collecting, accounting for, and disbursing the membership dues.

(e) Provides that a request under this section remains in effect until the chief financial official receives written notice of revocation in a form prescribed and provided by the chief financial official and filed by the member of the fire

department.

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

Sec. 176.005. CLASSIFICATION OF POSITIONS; SALARY SCHEDULE. (a) Requires each political subdivision to perform certain tasks.

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

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

(b) Provides that an offense under this section is punishable by a fine of not less than \$10 or more than \$100.

(c) Provides that each day the official causes or permits a violation of this chapter to occur is a separate offense.

Sec. 176.007. VACATION DAYS AND HOLIDAYS OF MEMBERS OF FIRE DEPARTMENT. (a) Provides that a member of a fire department in a political subdivision who has been regularly employed by the department for at least one year is entitled to the greater of certain vacation time.

(b) Requires the department head or the department head's designee to designate the days during which the member may be on vacation.

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

Sec. 176.008. HOURS OF LABOR AND OVERTIME PAY OF MEMBERS OF FIRE DEPARTMENT. (a) Defines "work cycle."

(b) Provides that a member of a fire department is considered to have worked overtime and is entitled to be compensated for the overtime as provided by Subsection (e) if the member meets certain conditions.

(c) Provides that a member of a fire department is considered to have worked overtime and is entitled to be compensated for the overtime as provided by Subsection (e) if the member meets certain conditions.

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

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

(2) hours during which the member of the fire department is required to leave a telephone number at which the member may be reached or is

required to remain accessible by radio or pager are not counted; and

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

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

(f) Provides that nothing in this section prevents a member of a fire department from working extra hours when exchanging work hours with another member of the fire department with the consent of the department head.

Sec. 176.009. PAYMENT FOR COURT APPEARANCES OF FIREFIGHTERS. (a) Requires a political subdivision to pay a member of a fire department for an appearance as a witness in a criminal case or a civil suit in which the political subdivision is a party in interest if the appearance meets certain criteria.

(b) Provides that payment under this section is at the member's regular rate of pay.

(c) Authorizes payment under this section to be taxed as court costs in civil suits.

(d) Provides that this section does not reduce or prohibit compensation paid in excess of the regular rate of pay.

SECTION 2. Amends Subtitle 5, Title 5, Local Government Code, by adding Chapter 177, as follows:

CHAPTER 177. FIREFIGHTER CIVIL SERVICE FOR CERTAIN LOCAL GOVERNMENTS

SUBCHAPTER A. GENERAL PROVISIONS

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

(b) Requires the members of the Firefighters' Civil Service Commission to administer this chapter in accordance with this purpose.

Sec. 177.002. ENTITIES AND POLITICAL SUBDIVISIONS COVERED BY CHAPTER. (a) Provides that this chapter applies to a fire department that meets certain conditions.

(b) Provides that except as provided by Subsection (c), this chapter applies to a political subdivision that meets certain conditions.

(c) Provides that this chapter does not apply to a municipality with a population of 10,000 or more or to a county.

Sec. 177.003. DEFINITIONS. Defines "chief executive," "commission," "department head," "director," "firefighter," and "governing body."

Sec. 177.004. ELECTION TO ADOPT OR REPEAL CHAPTER: FIRE DEPARTMENT SERVING TWO OR MORE ENTITIES. (a) Authorizes a fire department to which this chapter applies under Section 177.002(a) to adopt this chapter by majority vote of certain entities.

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

(c) Requires the ballot to be printed to provide for voting for or against the proposition: "Adoption of the firefighters' civil service law." Requires the governing body, if a majority of the votes received in the election favor adoption of this chapter, to implement this chapter.

(d) Provides that if an election is held under Subsection (b), a petition for a subsequent election to be held under that subsection may not be filed for at least one year after the date the previous election was held. Requires a petition for a subsequent election, to be valid, to contain the signatures of a number of qualified voters of the affected governmental entities equal to at least 20 percent of the combined total number of voters who voted in the most recent general election. Requires any subsequent election to be held on the first authorized uniform election date prescribed by Chapter 41, Election Code, that occurs after the petition is filed and allows sufficient time to comply with other requirements of law.

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

Sec. 177.005. ELECTION BY POLITICAL SUBDIVISION WITH PAID FIRE DEPARTMENT TO ADOPT OR REPEAL CHAPTER. (a) Authorizes a political subdivision to which this chapter applies under Section 177.002(b) to adopt this chapter by majority vote of certain entities.

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

(c) Requires the ballot to be printed to provide for voting for or against the proposition: "Adoption of the firefighters' civil service law." Requires the governing body, if a majority of the votes received in the election favor adoption of this chapter, to implement this chapter.

(d) Provides that if an election is held under Subsection (b), a petition for a subsequent election to be held under that subsection may not be filed for at least one year after the date the previous election was held. Requires a petition for a subsequent election, to be valid, to contain the signatures of a number of qualified voters of the political subdivision equal to at least 20 percent of the number of voters who voted in the most recent general election. Requires any subsequent election to be held on the first authorized uniform election date prescribed by Chapter 41, Election Code, that occurs after the petition is filed and allows sufficient time to comply with other requirements of law.

(e) Requires the governing body, if the governing body of a political subdivision that has operated under this chapter for at least one year receives a petition requesting an election to repeal this chapter that is signed by at least 10 percent of the qualified voters of the political subdivision, to order an election submitting to the voters the question of whether this chapter should be repealed. Provides that if a majority of the qualified voters vote to repeal this chapter, this chapter does not apply in that political subdivision.

Sec. 177.006. STATUS OF EMPLOYEES IF CHAPTER ADOPTED. Provides that each firefighter serving in a fire department for which this chapter has been adopted under Section 177.004 or 177.005 has the status of a civil service employee and is not required to take a competitive examination to remain in the position the firefighter occupies at the time of the adoption if the firefighter meets certain conditions.

Sec. 177.007. IMPLEMENTATION; COMMISSION. (a) Provides that on adoption of this chapter, the Firefighters' Civil Service Commission (commission) is established for the fire department. Requires the chief executive to appoint the members of the commission within 60 days after the date this chapter is adopted. Requires the governing body, within 30 days after the first day of the first full fiscal year applicable to the fire department that begins after the date of the adoption election, to implement this chapter.

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

(c) Requires a person appointed to the commission to meet certain criteria.

(d) Requires the chief executive, in making initial appointments, to designate one member to serve a one-year term and two members to serve two-year terms.

(e) Requires initial members to elect a presiding officer and an assistant presiding officer within 10 days after the date all members have qualified. Requires the members, each January, to elect a presiding officer and an assistant presiding officer.

(f) Requires the governing body to provide to the commission adequate and suitable office space in which to conduct business.

(g) Provides that the chief executive commits an offense if the chief executive knowingly or intentionally fails to appoint the initial members of the commission within the 60-day period prescribed by Subsection (a). Provides that an offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 or more than \$200. Provides that each day after the 60-day period that the chief executive knowingly or intentionally fails to make a required appointment

constitutes a separate offense.

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

Sec. 177.008. REMOVAL OF COMMISSION MEMBER. (a) Authorizes the governing body, if at a meeting held for that purpose the governing body finds that a commission member is guilty of misconduct in office, to remove the member. Authorizes the member to request that the meeting be held as an open hearing in accordance with Chapter 551, Government Code.

(b) Provides that if a commission member is indicted or charged by information with a criminal offense involving moral turpitude, the member is automatically suspended from office until the disposition of the charge. Requires the member, unless the member pleads guilty or is found to be guilty, to resume office at the time of disposition of the charge.

(c) Authorizes the governing body to appoint a substitute commission member during a period of suspension. Provides that if a member pleads guilty to or is found to be guilty of a criminal offense involving moral turpitude, the conviction removes the member from the commission and requires the governing body to appoint a replacement commission member to serve the remainder of the disqualified member's term of office.

Sec. 177.009. ADOPTION AND PUBLICATION OF RULES. (a) Requires the commission to adopt rules necessary for the proper conduct of commission business.

(b) Prohibits the commission from adopting a rule permitting the appointment or employment of a person who does not meet certain standards.

(c) Requires the commission to adopt rules that prescribe cause for removal or suspension of a firefighter. Requires the rules to comply with the grounds for removal prescribed by Section 177.151.

(d) Requires the commission to publish each rule it adopts and each classification and seniority list for the fire department. Requires the rules and lists to be made available on demand. Provides that a rule is considered to be adopted and sufficiently published if the commission adopts the rule by majority vote and reduces the rule to writing. Provides that publication in a newspaper is not required. Prohibits the governing body from acting on the rule.

(e) Provides that a rule is not valid and binding on the commission until the commission performs certain tasks.

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

Sec. 177.010. COMMISSION INVESTIGATIONS AND INSPECTIONS. (a) Authorizes the commission or a commission member designated by the commission to investigate and report on all matters relating to the enforcement and effect of this chapter and any rules adopted under this chapter and requires them to determine if the chapter and rules are being obeyed.

(b) Authorizes the commission or the commission member, during an investigation, to perform certain tasks.

(c) Requires a deposition taken in connection with an investigation under this section to be taken in the manner prescribed by law for taking a similar deposition in a civil action in federal district court.

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

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

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

(b) Requires the appeal to include certain information.

(c) Provides that in each hearing, appeal, or review of any kind in which the commission performs an adjudicatory function, the affected firefighter is entitled to be represented by counsel or a person the firefighter chooses. Requires each commission proceeding to be held in public.

(d) Authorizes the commission to issue subpoenas and subpoenas duces tecum for the attendance of witnesses and for the production of documentary material.

(e) Authorizes the affected firefighter to request that the commission 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 commission hearing will be held. Requires the commission, if the commission does not subpoena the material, before the third day before the date the hearing will be held, to make a written report to the firefighter stating the reason the commission will not subpoena the requested material. Requires this report to be read into the public record of the commission hearing.

(f) Authorizes witnesses to be placed under the rule at the commission hearing.

(g) Requires the commission to conduct the hearing fairly and impartially as prescribed by this chapter and to render a just and fair decision. Authorizes the commission to consider only the evidence submitted at the hearing.

(h) Requires the commission to maintain a public record of each proceeding with copies available at cost.

Sec. 177.012. DECISIONS AND RECORDS. (a) Requires each concurring commission member to sign a decision issued by the commission.

(b) Requires the commission to keep records of each hearing or case that comes before the commission.

(c) Requires each rule, opinion, directive, decision, or order issued by the commission to be written and provides that each is a public record that the commission retains on file.

Sec. 177.013. DIRECTOR. (a) Provides that on adoption of this chapter, the office of Director of Firefighters' Civil Service is established for the fire department. Requires the commission to appoint the director and authorizes them to remove the director at any

time. Requires the director shall to perform certain tasks.

(b) Requires a person appointed as director to meet each requirement for appointment to the commission prescribed by Section 177.007(c) except the local residency requirement.

(c) Authorizes a person appointed as director to be a commission member, an employee of an affected political subdivision, or another person.

(d) Requires the governing body to determine the salary, if any, to be paid to the director.

Sec. 177.014. APPOINTMENT AND REMOVAL OF DEPARTMENT HEAD. (a) Provides that unless elected, each department head is appointed by the chief executive and confirmed by the governing body.

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

(c) Requires a person removed from the position of department head, except as provided by Subsection (d), to be reinstated in the department and placed in a position with a rank not lower than that held by the person immediately before appointment as department head. Provides that the person retains all rights of seniority in the department.

(d) Provides that a person serving as department head who is charged with an offense in violation of civil service rules and is dismissed from the civil service or discharged from the person's position as department head has the same rights and privileges to have a hearing before the commission in the same manner and under the same conditions as a classified employee. Requires the person, if the commission finds that the charges are false or unfounded, to immediately be restored to the same classification that the person held before appointment as department head. Provides that the person has all the rights and privileges pertaining to the prior position according to seniority and is required to be paid the person's full salary for the time of suspension.

Sec. 177.015. APPEAL OF COMMISSION DECISION TO DISTRICT COURT. (a) Authorizes a firefighter who is dissatisfied with any commission decision to file a petition in district court asking that the decision be set aside. Requires the petition to be filed within 10 days after the date the final commission decision certain conditions are met.

(b) Authorizes the district court to grant the appropriate legal or equitable relief necessary to accomplish the purposes of this chapter. Authorizes the relief to include reinstatement or promotion with back pay if an order of suspension, dismissal, or demotion 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, if the court finds for the firefighter, to order the governing body to ensure that lost wages are paid to the firefighter.

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

(b) Provides that an offense under this section or Section 177.010 is a misdemeanor punishable by a fine of not less than \$10 or more than \$100,

confinement in the county jail for not more than 30 days, or both the fine and confinement.

[Reserves Sections 177.017-177.050 for expansion.]

SUBCHAPTER B. CLASSIFICATION AND APPOINTMENT

Sec. 177.051. CLASSIFICATION; EXAMINATION REQUIREMENT. (a) Requires the commission to provide for the classification of all firefighters. Requires the governing body to perform certain tasks.

(b) Provides that except for the department head, each firefighter is classified as prescribed by this subchapter and has civil service protection. Provides that the failure of the governing body to establish a position does not result in the loss of civil service benefits by a person entitled to civil service protection or appointed to the position in substantial compliance with this chapter.

(c) Authorizes, except as provided by Section 177.014, an existing position or classification or a position or classification created in the future either by name or by increase in salary, to be filled only from an eligibility list that results from an examination held in accordance with this chapter.

Sec. 177.052. PHYSICAL REQUIREMENTS AND EXAMINATIONS. (a) Requires the commission to set the age and physical requirements for applicants for beginning and promotional positions in accordance with this chapter. Requires the requirements to be the same for all applicants.

(b) Requires the commission to require each applicant for a beginning or a promotional position to take an appropriate physical examination. Authorizes the commission to require each applicant for a beginning position to take a mental examination. Requires the examination to be administered by a physician, psychiatrist, or psychologist, as appropriate, appointed by the commission. Requires the fire department to pay for each examination.

(c) Authorizes the applicant, if an applicant is rejected by the physician, psychiatrist, or psychologist, as appropriate, to request another examination by a board of three physicians, psychiatrists, or psychologists, as appropriate, appointed by the commission. Requires the applicant to pay for the board examination. Provides that the board's decision is final.

Sec. 177.053. ELIGIBILITY FOR BEGINNING POSITION. (a) Prohibits a person from taking an entrance examination for a beginning position in the fire department unless the person is at least 18 years of age.

(b) Prohibits an applicant from being certified as eligible for a beginning position with a fire department unless the applicant meets all legal requirements necessary to become eligible for future certification by the Texas Commission on Fire Protection.

(c) Requires each firefighter affected by this chapter to be able to read and write English.

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

(b) Requires the notice required by Subsection (a) to also state the period during which the eligibility list created as a result of the examination will be effective.

Sec. 177.055. ENTRANCE EXAMINATIONS. (a) Requires the commission to provide for open, competitive, and free entrance examinations to provide eligibility lists for beginning positions in the fire department. Provides that the examinations are open to each person who makes a proper application and meets the requirements prescribed by this chapter.

(b) Authorizes an eligibility list for a beginning position in the fire department to be created only as a result of a competitive examination held in the presence of each applicant for the position, except as provided by Subsection (d). Requires the examination to be based on the applicant's knowledge of and qualifications for fire fighting and work in the fire department and to inquire into the applicant's general education and mental ability. Prohibits a person from being appointed to the fire department except as a result of the examination.

(c) Prohibits an applicant from taking an examination unless at least one other applicant taking the examination is present.

(d) Authorizes examinations for beginning positions in the fire department to be held at different locations if each applicant takes the same examination and is examined in the presence of other applicants.

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

(f) Prohibits an applicant from taking the examination for a particular eligibility list more than once.

(g) Requires the commission to perform certain tasks.

(h) Requires the grade to be placed on the eligibility list for each applicant to be computed by adding an applicant's points under Subsection (e), if any, to the applicant's grade on the written examination. Provides that each applicant's grade on the written examination is based on a maximum grade of 100 points and is determined entirely by the correctness of the applicant's answers to the questions. Provides that the minimum passing grade on the examination is 70 points. Requires an applicant to pass the examination to be placed on an eligibility list.

Sec. 177.056. PROCEDURE FOR FILLING BEGINNING POSITIONS. (a) Requires the department head, when a vacancy occurs in a beginning position in a fire department, to request in writing from the commission the names of suitable persons from the eligibility list. Requires the director to certify to the chief executive the names of the three persons having the highest grades on the eligibility list.

(b) Requires the chief executive, from the three names certified, to appoint the person having the highest grade unless there is a valid reason why the person having the second or third highest grade should be appointed.

(c) Requires the chief executive, if the chief executive does not appoint the person having the highest grade, to clearly set forth in writing a good and sufficient reason why the person having the highest grade was not appointed.

(d) Requires the reason required by Subsection (c) to be filed with the commission and a copy provided to the person having the highest grade. Requires a copy of the report, if the chief executive appoints the person having the third highest grade, to also be furnished to the person having the second highest grade.

Sec. 177.057. PROBATIONARY PERIOD. (a) Requires a person appointed to a beginning position in the fire department to serve a probationary period of one year beginning on that person's date of employment as a firefighter.

(b) Requires the department head, during a firefighter's probationary period, to discharge the firefighter and remove the firefighter from the payroll if the firefighter's appointment was not regular or was not made in accordance with this chapter or commission rules.

(c) Provides that during a firefighter's probationary period, the firefighter may not be prohibited from joining or be required to join an employee organization. Provides that joining or not joining an employee organization is not a ground for retaining or not retaining a firefighter serving a probationary period.

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

Sec. 177.058. CERTAIN ELIGIBILITY PROVISIONS RELATING TO PROMOTION.

(a) Provides that a firefighter is not eligible for promotion to the rank of captain or its equivalent unless the person has at least four years' actual service in that fire department.

(b) Provides that if a person is recalled to active military duty for not more than 24 months, the two-year service requirements prescribed by Section 177.060 do not apply and the person is entitled to have time spent on active military duty considered as duty in the fire department. Requires the person on return, if the active military duty exceeds 12 months to serve in the department for 90 days before the person is eligible to participate in a promotional examination. Provides that this time is considered necessary to bring the person up to date on equipment and techniques.

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

(b) Requires the commission, before the 30th day before the date a promotional examination is held, to post a notice of the examination in plain view on a bulletin board located in the main lobby of the administrative offices of the governing body and in the commission's office. Requires the notice to show the position to be filled or for which the examination is to be held and the date, time, and place of the examination. Requires the commission to also furnish sufficient copies of the notice for posting in the stations or subdepartments in which the position will be filled.

(c) Authorizes the notice required by Subsection (b) to also include the name of each source used for the examination, the number of questions taken from each source, and the chapter used in each source.

Sec. 177.060. ELIGIBILITY FOR FIRE DEPARTMENT PROMOTIONAL

EXAMINATION. (a) Provides that each promotional examination is open to each firefighter who at any time has continuously held for at least two years a position in the classification that is immediately below, in salary, the classification for which the examination is to be held.

(b) Provides that if the department has adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, each promotional examination is open to each firefighter who has continuously held for at least two years a position at the next lower pay grade, if it exists, in the classification for

which the examination is to be held.

(c) Authorizes the commission, if there are not enough firefighters in the next lower position with two years' service in that position to provide an adequate number of persons to take the examination, to open the examination to persons in that position with less than two years' service. Authorizes the commission, if there is still an insufficient number, to open the examination to persons with at least two years' experience in the second lower position, in salary, to the position for which the examination is to be held.

(d) Requires a firefighter who previously terminated the firefighter's employment with the department and is subsequently reemployed by the same department to again meet the two-year service requirement for eligibility to take a promotional examination. Provides that in determining if a firefighter has met the two-year service requirement, a fire department may not consider service in another fire department.

(e) Provides that this section does not prohibit lateral crossover between classes.

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

(b) Requires each eligible promotional candidate to be given an identical examination in the presence of the other eligible promotional candidates.

(c) Requires the examination to be entirely in writing and not in any part consist of an oral interview.

(d) Requires the examination questions to test the knowledge of the eligible promotional candidates about information and facts and must be based on certain information.

(e) Requires the examination questions to be taken from the sources posted as prescribed by Section 177.059(a). Authorizes firefighters to suggest source materials for the examinations.

(f) Authorizes the examination questions to be prepared and composed so that the grading of the examination can be promptly completed immediately after the examination is over.

(g) Provides that the director is responsible for the preparation and security of each promotional examination. Provides that the fairness of the competitive promotional examination is the responsibility of the commission, the director, and each employee involved in the preparation or administration of the examination.

(h) Provides that a person commits an offense if the person knowingly or intentionally performs certain actions.

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

Sec. 177.062. PROMOTIONAL EXAMINATION GRADES. (a) Requires the grading of each promotional examination to begin when one eligible promotional candidate completes the examination. Requires the examinations, as the eligible promotional candidates finish the examination, to be graded at the examination location and in the presence of any candidate who wants to remain during the grading.

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

(c) Requires the grade that must be placed on the eligibility list for each firefighter to be computed by adding the applicant's points for seniority to the applicant's grade on the written examination. Provides that each applicant's grade on the written examination is based on a maximum grade of 100 points and is determined entirely by the correctness of the applicant's answers to the questions. Requires all applicants who receive a grade of at least 70 points to be determined to have passed the examination. Requires the commission, if a tie score occurs, to determine a method to break the tie.

(d) Requires the commission, within 24 hours after a promotional examination is held, to post the individual raw test scores on a bulletin board located in the main lobby of the governing body's offices.

Sec. 177.063. REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION. (a) Provides that on request, each eligible promotional candidate from the fire department is entitled to examine the person's promotional examination and answers, the examination grading, and the source material for the examination. Authorizes the candidate, if dissatisfied, to appeal, within five business days, to the commission for review in accordance with this chapter. Provides that in computing this period, a Saturday, Sunday, or legal holiday is not considered a business day.

(b) Prohibits the eligible promotional candidate from removing the examination or copy a question used in the examination.

Sec. 177.064. PROCEDURE FOR MAKING PROMOTIONAL APPOINTMENTS. (a) Requires the vacancy, when a vacancy occurs in a nonentry position, to be filled as prescribed by this section.

(b) Requires the director, if an eligibility list for the position to be filled exists on the date the vacancy occurs, on request by the department head, to certify to the department head the names of the three persons having the highest grades on that eligibility list. Requires the director to certify the names within 10 days after the date the director is notified of the vacancy. Requires each name, if fewer than three names remain on the eligibility list or if only one or two eligible promotional candidates passed the promotional examination, to be submitted to the department head.

(c) Requires the director to submit names from an existing eligibility list to the department head until the vacancy is filled or the list is exhausted.

(d) Requires the commission, if an eligibility list does not exist on the date a vacancy occurs or a new position is created, to hold an examination to create a new eligibility list within 90 days after the date the vacancy occurs or a new position is created.

(e) Requires the department head, if an eligibility list exists on the date a vacancy occurs, to fill the vacancy by permanent appointment from the names on the eligibility list furnished by the director within 60 days after the date the vacancy occurs. Requires the department head, if an eligibility list does not exist, to fill the vacancy by permanent appointment from names on an eligibility list that the commission shall provide within 90 days after the date the vacancy occurs.

(f) Requires the department head, unless the department head has a valid reason for not appointing the person, to appoint the eligible promotional candidate having the highest grade on the eligibility list.

(g) Requires a department head that has a valid reason for not appointing the eligible promotional candidate having the highest grade to personally discuss the reason with the person being bypassed before appointing another person. Requires the department head to also file the reason in writing with the commission. Provides that on application of the bypassed eligible promotional candidate, the reason the department head did not appoint that person is subject to review by the commission.

(h) Requires the person's name, if a person is bypassed, to be returned to its place on the eligibility list and requires it to be resubmitted to the department head if a vacancy occurs.

(i) Requires a person's name to be removed from the eligibility list if certain conditions are met.

(j) Provides that each promotional eligibility list remains in existence for one year after the date on which the written examination is given, unless exhausted. Provides that at the expiration of the one-year period, the eligibility list expires and a new examination may be held.

Sec. 177.065. RECORD OF CERTIFICATION AND APPOINTMENT. (a) Requires the director, when a person is certified and appointed to a position in the fire department to perform certain tasks.

(b) Requires the record to contain certain information.

(c) Requires the commission, if the director intentionally fails to comply with this section, to immediately remove the director from office.

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

Sec. 177.066. TEMPORARY DUTIES IN HIGHER CLASSIFICATION. (a) Authorizes the department head to designate a person from the next lower classification to temporarily fill a position in a higher classification.

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

(c) Prohibits the temporary performance of the duties of a higher position by a person who has not been promoted as prescribed by this chapter from being construed as a promotion.

[Reserves Sections 177.067-177.100 for expansion.]

SUBCHAPTER C. COMPENSATION

Sec. 177.101. SALARY. (a) Provides that except as provided by Section 177.066, all firefighters in the same classification are entitled to the same base salary.

(b) Provides that in addition to the base salary, each firefighter is entitled to certain types of pay, if applicable.

Sec. 177.102. ASSIGNMENT PAY. (a) Authorizes a governing body to authorize assignment pay for firefighters who perform specialized functions.

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

(c) Authorizes the enactment, if the enactment applies equally to each person who meets the criteria established by the enactment, to provide for certain criteria.

(d) Provides that the head of the fire department is not eligible for the assignment pay authorized by this section.

Sec. 177.103. CERTIFICATION AND EDUCATIONAL INCENTIVE PAY. (a) Authorizes the governing body, if each firefighter in a political subdivision is afforded an opportunity to qualify for certification, to authorize certification pay to those firefighters who meet the requirements for certification set by the Texas Commission on Fire Protection.

(b) Authorizes the governing body, if the criteria for educational incentive pay are clearly established, in writing, and are applied equally to each firefighter who meets the criteria, to authorize educational incentive pay for each firefighter who has successfully completed courses at an accredited college or university.

(c) Provides that the certification pay and educational incentive pay are in addition to a firefighter's regular pay.

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

(b) Authorizes a firefighter to accumulate sick leave without limit and to use the leave if unable to work because of a bona fide illness. Requires an extension of sick leave, if an ill firefighter exhausts the sick leave and can conclusively prove that the illness was incurred in the performance of duties, to be granted.

(c) Provides that a firefighter who leaves the classified service for any reason is entitled to receive in a lump-sum payment the full amount of the person's salary for accumulated sick leave if the person has accumulated not more than 90 days of sick leave. Authorizes the person's employer, if a firefighter has accumulated more than 90 days of sick leave, to limit payment to the amount that the person would have received if the person had been allowed to use 90 days of accumulated sick leave during the last six months of employment. Provides that the lump-sum payment is computed by compensating the person for the accumulated time at the highest permanent pay classification for which the person was eligible during the last six months of employment. Provides that the person is paid for the same period for which the person would have been paid if the person had taken the sick leave but does not include additional holidays and any sick leave or vacation time that the person might have accrued during the 90 days.

(d) Requires, to facilitate the settlement of the accounts of deceased firefighters, all unpaid compensation, including all accumulated sick leave, due at the time of death to an active firefighter who dies as a result of a line-of-duty injury or illness, to be paid to the persons in the first applicable category in a listed order of priority if certain conditions are met.

(e) Provides that payment of compensation to a person in a category in accordance with Subsection (d) is a bar to recovery by a person in another category.

Sec. 177.105. VACATIONS. (a) Provides that each firefighter is entitled to earn a

minimum of 15 working days' vacation leave with pay in each year.

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

(c) Prohibits a firefighter from accumulating vacation leave from year to year, unless approved by the governing body.

[Reserves Sections 177.106-177.150 for expansion.]

SUBCHAPTER D. DISCIPLINARY ACTIONS

Sec. 177.151. CAUSE FOR REMOVAL OR SUSPENSION. Provides that a commission rule prescribing cause for removal or suspension of a firefighter is not valid unless it involves one or more of certain grounds.

Sec. 177.152. DISCIPLINARY SUSPENSIONS. (a) Authorizes the head of the fire department to suspend a firefighter under the department head's supervision or jurisdiction for the violation of a civil service rule. Authorizes the suspension to be for a reasonable period not to exceed 15 calendar days or for an indefinite period. Provides that an indefinite suspension is equivalent to dismissal from the department.

(b) Requires the department head, if the department head suspends a firefighter, to perform certain actions.

(c) Requires the copy of the written statement to inform the suspended firefighter that if the person wants to appeal to the commission, the person must file a written appeal with the commission within 10 days after the date the person receives the copy of the statement.

(d) Requires the written statement filed by the department head with the commission to point out each civil service rule alleged to have been violated by the suspended firefighter and to describe the alleged acts of the person that the department head contends are in violation of the civil service rules. Provides that it is not sufficient for the department head merely to refer to the provisions of the rules alleged to have been violated.

(e) Requires the commission, if the department head does not specifically point out in the written statement the act or acts of the firefighter that allegedly violated the civil service rules, to promptly reinstate the person.

(f) Authorizes the firefighter, if offered by the department head, to agree in writing to voluntarily accept, with no right of appeal, a suspension of 16 to 90 calendar days for the violation of a civil service rule. Requires the firefighter to accept the offer within five working days after the date the offer is made. Requires the person, if the person refuses the offer and wants to appeal to the commission, to file a written appeal with the commission within 15 days after the date the person receives the copy of the written statement of suspension.

(g) Prohibits the department head, in the original written statement and charges and in any hearing conducted under this chapter, from complaining of an act that occurred earlier than the 180th day preceding the date the department head suspends the firefighter. Provides that if the act is allegedly related to criminal activity, including the violation of a federal, state, or local law for which the firefighter is subject to a criminal penalty, the department head:

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

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

Sec. 177.153. APPEAL OF DISCIPLINARY SUSPENSION. (a) Requires the commission, if a suspended firefighter appeals the suspension to the commission, to hold a hearing and render a decision in writing within 30 days after the date it receives notice of appeal. Authorizes the suspended person and the commission to agree to postpone the hearing for a definite period.

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

(c) Authorizes the commission to deliberate the decision in closed session but prohibits it from considering evidence that was not presented at the hearing. Requires the commission to vote in open session.

(d) Requires the commission, in its decision, to state whether the suspended firefighter is:

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

(e) Authorizes the commission, if the commission finds that the period of disciplinary suspension should be reduced, to order a reduction in the period of suspension. Provides that if the suspended firefighter is restored to the position or class of service from which the person was suspended, the firefighter is entitled to certain benefits.

(f) Requires standard payroll deductions, if any, for retirement and other benefits restored as provided by Subsection (c) to be made from the compensation paid, and requires the political subdivision or subdivisions to make the standard corresponding contributions, if any, to the retirement system or other applicable benefit systems.

(g) Authorizes the commission to suspend or dismiss a firefighter only for violation of civil service rules and only after a finding by the commission of the truth of specific charges against the firefighter.

Sec. 177.154. DEMOTIONS. (a) Authorizes the department head, if the head of the fire department wants a firefighter under the department head's supervision or jurisdiction to be involuntarily demoted, to recommend in writing to the commission that the commission demote the firefighter.

(b) Requires the department head to perform certain tasks.

(c) Authorizes the commission to refuse to grant the request for demotion. Requires the commission, if the commission believes that probable cause exists for ordering the demotion, to give the firefighter written notice to appear before the commission for a public hearing at a time and place specified in the notice. Requires the commission to give the notice before the 10th day before the date the hearing will be held.

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

(e) Provides that a voluntary demotion in which the firefighter has accepted the

terms of the demotion in writing is not subject to this section.

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

(b) Requires the department head to notify the suspended firefighter in writing that: the person is being temporarily suspended for a specific period with or without pay; and the temporary suspension is not intended to reflect an opinion on the merits of the indictment or complaint.

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

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

(e) Authorizes the firefighter, if the department head temporarily suspends a firefighter under this section and the firefighter is not found guilty of the criminal charge, to appeal to the commission or to a hearing examiner for recovery of back pay. Authorizes the commission or hearing examiner to award all or part of the back pay or reject the appeal.

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

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

(h) Authorizes the department head to, after the 180-day period following the date of the discovery of the act by the department, order an indefinite suspension based on an act classified as a felony or a Class A or B misdemeanor if the department head considers delay to be necessary to protect a criminal investigation of the person's conduct. Requires the department head, if the department head intends to order an indefinite suspension after the 180-day period, to file with the attorney general a statement describing the criminal investigation and its objectives within 180 days after the date the act complained of occurred.

Sec. 177.156. HEARING EXAMINERS. (a) Requires the letter of disciplinary action issued to a firefighter in addition to the other notice requirements prescribed by this chapter, to state certain information.

(b) Requires the appealing firefighter, to exercise the choice of appealing to a hearing examiner, to submit to the director 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.

(c) Provides that 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 Subsection (j).

(d) Requires the firefighter and the department head, or their designees, if the appealing firefighter chooses to appeal to a hearing examiner, to first attempt to agree on the selection of an impartial hearing examiner. Requires the director, if the parties do not agree on the selection of a hearing examiner within 10 days after the date the appeal is filed, 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 each party or the party's designee, if they do not agree within five working days after the date they received the list, 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.

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

(f) Provides that in each hearing conducted under this section, the hearing examiner has the same duties and powers as the commission, including the right to issue subpoenas.

(g) Authorizes the parties to agree to an expedited hearing procedure in a hearing conducted under this section. Requires the hearing examiner, unless otherwise agreed by the parties, in an expedited procedure, to render a decision on the appeal within 10 days after the date the hearing ends.

(h) Requires the hearing examiner, in an appeal that does not involve an expedited hearing procedure, to make a reasonable effort to render a decision on the appeal within 30 days after the date the hearing ends or the briefs are filed. Provides that the hearing examiner's inability to meet the time requirements imposed by this section does not affect the hearing examiner's jurisdiction, the validity of the disciplinary action, or the hearing examiner's final decision.

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

(j) 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 hearing examiner's jurisdiction or that the order was procured by fraud, collusion, or other unlawful means. Requires an appeal to be brought in the district court having jurisdiction in a political subdivision served by the fire department.

[Reserves Sections 177.157-177.200 for expansion.]

SUBCHAPTER E. LEAVES OF ABSENCE

Sec. 177.201. LEAVES OF ABSENCE; RESTRICTION PROHIBITED. (a) Prohibits a firefighter, if a sufficient number of firefighters are available to perform the normal

functions of the fire department, from being refused a reasonable leave of absence without pay to attend a fire school, convention, or meeting if the purpose of the school, convention, or meeting is to secure a more efficient department or better working conditions for department personnel.

(b) Prohibits a rule that affects a firefighter's constitutional right to appear before or to petition the legislature from being adopted.

Sec. 177.202. **MILITARY LEAVE OF ABSENCE.** (a) Requires the commission, on written application of a firefighter, to grant the person a military leave of absence without pay to enable the person to enter a branch of the United States military service. Prohibits the leave of absence from exceeding the period of compulsory military service or the basic minimum enlistment period for the branch of service the firefighter enters.

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

(c) Requires the commission, while a firefighter who received a military leave of absence serves in the military, to fill the person's position in the department in accordance with this chapter. Provides that the firefighter who fills the position is subject to replacement by the person who received the military leave at the time the person returns to active duty in the department.

(d) Provides that on termination of active military service, a firefighter who received a military leave of absence under this section is entitled to be reinstated to the position that the person held in the department at the time the leave of absence was granted if the person meets certain criteria.

(e) Requires the firefighter, on reinstatement, to receive full seniority credit for the time spent in the military service.

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

Sec. 177.203. **LEAVE OF ABSENCE FOR LINE-OF-DUTY ILLNESS OR INJURY.**

(a) Requires a fire department to provide to a firefighter a leave of absence for an illness or injury related to the person's line of duty. Provides that the leave is with full pay for a period commensurate with the nature of the illness or injury. Requires the leave, if necessary, to continue for at least one year.

(b) Authorizes the governing body, at the end of the one-year period, to extend the line-of-duty illness or injury leave at full or reduced pay. Provides that if the firefighter's salary is reduced below 60 percent of the person's regular monthly salary and the fire department has or participates in a pension fund, the person is authorized to retire on pension until able to return to duty.

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

(d) Authorizes the person, if a firefighter is temporarily disabled by an injury or illness that is not related to the person's line of duty, to use all sick leave, vacation

time, and other accumulated time before the person is placed on temporary leave.

(e) Requires a firefighter, after recovery from a temporary disability, to be reinstated at the same rank and with the same seniority the person had before going on temporary leave. Authorizes another firefighter to voluntarily do the work of an injured firefighter until the person returns to duty.

Sec. 177.204. REAPPOINTMENT AFTER RECOVERY FROM DISABILITY.

Provides that with the commission's approval and if otherwise qualified, a firefighter who has been certified by a physician selected by the person's pension fund as having recovered from a disability for which the person has been receiving a monthly disability pension is eligible for reappointment to the classified position that the person held on the date the person qualified for the monthly disability pension.

[Reserves Sections 177.205-177.250 for expansion.]

SUBCHAPTER F. MISCELLANEOUS PROVISIONS

Sec. 177.251. DETERMINATION OF PHYSICAL AND MENTAL FITNESS. (a)

Requires the firefighter, if a question arises as to whether a firefighter is sufficiently physically or mentally fit to continue the person's duties, to submit to the commission a report from the person's personal physician, psychiatrist, or psychologist, as appropriate.

(b) Requires the commission, if the commission, the department head, or the firefighter questions the report, to appoint a physician, psychiatrist, or psychologist, as appropriate, to examine the firefighter and to submit a report to the commission, the department head, and the firefighter.

(c) Requires the commission, if the report of the appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with the report of the firefighter's personal physician, psychiatrist, or psychologist, as appropriate, to appoint a three-member board composed of a physician, a psychiatrist, and a psychologist, or any combination, as appropriate, to examine the firefighter. Requires the board's findings as to the person's fitness for duty to determine the issue.

(d) Requires the firefighter to pay the cost of the services of the person's personal physician, psychiatrist, or psychologist, as appropriate. Requires the fire department to pay all other costs.

Sec. 177.252. FORCE REDUCTION AND REINSTATEMENT LIST. (a) Requires the firefighter who holds that position, if the governing body vacates or abolishes a fire department position, to be demoted to the position immediately below the vacated or abolished position. Requires the firefighters who have the least seniority in a position, if one or more positions of equal rank are vacated or abolished, to be demoted to the position immediately below the vacated or abolished position.

(b) Requires the firefighter, if a firefighter is demoted under Subsection (a) without charges being filed against the person for violation of civil service rules, to be placed on a position reinstatement list in order of seniority. Requires the position to be filled from the reinstatement list if the vacated or abolished position is filled or re-created within one year after the date it was vacated or abolished. Requires appointments from the reinstatement list to be made in order of seniority. Prohibits a person who is not on the list from being appointed to the position during the one-year period until the reinstatement list is exhausted.

(c) Requires the firefighter with the least seniority to be dismissed if a position in the lowest classification is abolished or vacated and a firefighter must be dismissed from the department.

(d) Requires the firefighter, if a firefighter is dismissed under Subsection (c) without charges being filed against the person for violation of civil service rules, to be placed on a reinstatement list in order of seniority. Requires appointments from the reinstatement list to be made in order of seniority. Prohibits a person, until the reinstatement list is exhausted, from being appointed from an eligibility list. Requires the person, when a person has been on a reinstatement list for three years, to be dropped from the list but to be restored to the list at the request of the commission.

Sec. 177.253. **POLITICAL ACTIVITIES.** (a) Prohibits a firefighter while in uniform or on active duty, from taking an active part in another person's political campaign for an elective position of the political subdivision.

(b) Provides that for purposes of this section, a person takes an active part in a political campaign if the person meets certain criteria.

(c) Prohibits a firefighter from being: required to contribute to a political fund or to render a political service to a person or political party; or removed, reduced in classification or salary, or otherwise prejudiced for refusing to contribute to a political fund or to render a political service.

(d) Provides that an official of the political subdivision who attempts to violate Subsection (c) violates this chapter.

(e) Prohibits the commission or the governing body from restricting a firefighter's right to engage in a political activity.

Sec. 177.254. **STRIKE PROHIBITION.** (a) Prohibits a firefighter from engaging in a strike against the fire department.

(b) Requires the person, in addition to the penalty prescribed by Section 177.016, if a firefighter is convicted of an offense for violating this section, to be automatically released and discharged from the fire department. Prohibits the person from receiving any pay or compensation from public funds used to support the fire department after the person is discharged from the department.

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

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

(c) Provides that an offense under this section is a Class A misdemeanor.

Sec. 177.256. **PERSONNEL FILE.** (a) Requires the director or the director's designee to maintain a personnel file on each firefighter. Requires the personnel file to contain any letter, memorandum, or document relating to certain issues.

(b) Prohibits a letter, memorandum, or document relating to alleged misconduct by the firefighter from being placed in the person's personnel file if the employing department determines there is insufficient evidence to sustain the charge of misconduct.

(c) Requires a letter, memorandum, or document relating to disciplinary action taken against the firefighter or to alleged misconduct by the firefighter that is placed in the person's personnel file as provided by Subsection (a)(2) to be

removed from the employee's file if the commission makes certain findings.

(d) Requires the director or the director's designee, if a negative letter, memorandum, document, or other notation of negative impact is included in a firefighter's personnel file, to, within 30 days after the date of the inclusion, notify the affected firefighter. Authorizes the firefighter to, on or before the 15th day after the date of receipt of the notification, file a written response to the negative letter, memorandum, document, or other notation.

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

(f) Prohibits the director or the director's designee from releasing any information contained in a firefighter's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

(g) Authorizes a fire department to maintain a personnel file on a firefighter employed by the department for the department's use, but the prohibits the department from releasing any information contained in the department file to any agency or person requesting information relating to a firefighter, except to the firefighter or the firefighter's designee. Requires the department to refer to the director or the director's designee a person or agency that requests information that is maintained in the firefighter's personnel file.

SECTION 3. Effective date: September 1, 2003.