

BILL ANALYSIS

Senate Research Center
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S.B. 1227
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current employment law affecting firefighters is geared toward those firefighters who are employed by municipalities. However, the creation of emergency services districts (ESDs) and other non-municipal entities that employ professional full-time paid firefighters has in turn created the necessity for statutory changes to ensure that those firefighters receive benefits and job security similar to municipal fire fighters.

As proposed, S.B. 1227 applies only to ESDs with a population of 30,000 or more created by an interlocal agreement between two or more political subdivisions of this state. This bill requires a firefighter of an ESD to receive the same calculation of overtime pay and accrual of compensatory time off in lieu of cash overtime afforded as other employees of the ESD or entity. In addition, firefighters are to receive longevity pay and pay for working in a higher classification, and are granted the right to have association dues deducted from their payroll.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

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

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

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

(b) Provides that this chapter does not apply to the fire department of and firefighters employed by certain emergency services districts or volunteer fire departments.

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

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

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

Sec. 179.003. PAYROLL DEDUCTIONS; LONGEVITY PAY; CLASSIFICATION PAY; PENALTY. (a) Provides that Sections 141.008 (Payroll Deductions in Certain

Municipalities), 141.032 (Longevity Pay), 141.033 (Classification of Positions; Salary Schedule), and 141.034 (Petition to Increase Salaries) apply to a firefighter employed by an emergency services employer.

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

Sec. 179.004. ASSISTANCE; BENEFITS; WORKING CONDITIONS; PENALTY. Provides that certain sections of this code apply to a firefighter employed by an emergency services employer.

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

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

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

(c) Requires the department head, within 120 hours after the hour of suspension or dismissal, to file and deliver to certain persons a written statement of the reasons for the suspension or dismissal under certain conditions if a department head suspends or dismisses a firefighter.

(d) Requires the written statement to list each fire department or emergency services employer rule allegedly violated by the firefighter and specifically describe the actions of the firefighter that allegedly violate the rule.

(e) Prohibits a department head from amending a written statement under Subsection (c).

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

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

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

(d) Requires the governing body, in its decision, to state whether the firefighter is permanently dismissed from employment with the department, temporarily suspended from employment with the department, or reinstated to the firefighter's former position or status in the department.

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

(f) Entitles a firefighter who is reinstated to the position or class of service from which the firefighter was suspended or dismissed to full compensation for the actual time lost as a result of the suspension or dismissal at the rate of pay provided for the position held or class of service assigned; and restoration of or credit for any other benefits lost as a result of the suspension or dismissal.

(g) Requires the emergency services employer to make any standard payroll deductions for retirement and other benefits restored as provided by Subsection (f) from any compensation paid under that section and to make any of the employer's standard corresponding contributions to the retirement system or other applicable benefit system.

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

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

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

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

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

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

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

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

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

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

(b) Provides that the hearing examiner's decision is final and binding on all parties and that the person automatically waives all rights to appeal to a district court except as provided by Section 179.010(e) if the firefighter decides to appeal to an independent third party hearing examiner.

(c) Sets forth procedural requirements for the selection of a hearing examiner if a firefighter chooses to appeal to a hearing examiner instead of the governing body.

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

(e) Provides that the hearing examiner has the same duties and powers as the governing body, including the power to issue subpoenas.

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

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

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

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

(d) Requires the court to order the emergency services employer to pay lost wages to the firefighter.

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

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

SECTION 2. Effective date: September 1, 2007.