

TABLE OF CONTENTS

Page	<u>LOCAL GOVERNMENT CODE</u>
1	CHAPTER 141 - Compensation, Expenses and Payroll Deduction
4	CHAPTER 142 – Meet and Confer, Hours, Benefits and Working Conditions
16	CHAPTER 143 - Municipal Civil Service
52	CHAPTER 150 - Miscellaneous Provisions
53	CHAPTER 173 - Temporary Salary Payments for Military Duty
54	CHAPTER 174 - Collective Bargaining
64	CHAPTER 175 - Health Insurance At Retirement
67	CHAPTER 180 - Political Campaigns, Pregnancy Benefits and Waiver of Sovereign Immunity
	 <u>HEALTH AND SAFETY CODE</u>
69	CHAPTER 81 - Communicable Diseases
	 <u>GOVERNMENT CODE</u>
72	CHAPTER 417 - State Fire Marshal
76	CHAPTER 419 - Commission On Fire Protection
103	CHAPTER 607 - Contagious Disease Benefits
107	CHAPTER 614 - Legislative Leave and Complaints Against Fire Fighters
109	CHAPTER 615 - Survivor Benefits
120	CHAPTER 617 - Collective Bargaining and Strikes
	 <u>TRANSPORTATION CODE</u>
121	Chapter 552 – Sean McKinnis Charitable Solicitation Act

This booklet is updated through the 80th Legislative Session and may be used up to September 2009.

80th Legislative Session – Statute Additions/Changes

Local Government Code

142.0015 – Fire Fighter Overtime, amended Sections (b), (c), (d) and (e).

* Section (f) amended and Section (f-1) added to apply to police officers.

143.025 – Added sub-section (k).

143.027 – Non-substantive amendment to clarify language.

174.008 – Added to waive sovereign immunity of employers under Collective Bargaining.

180.006 – Added to waive sovereign immunity of employers under city charters, municipal ordinances and certain statutes providing salary and other monetary benefits.

Government Code

419.054 (a) – Commission On Fire Protection Funds Allocation Advisory Committee composition changes.

615.0225 (a) – Line of Duty Death Benefits – Amended to clarify the definition of a child who is eligible to receive benefits.

Transportation Code

552.007 (g) – Sean McKinnis Charitable Solicitation Act amended to add the definition of a roadway under the Act.

LOCAL GOVERNMENT CODE

CHAPTER 141. COMPENSATION AND EXPENSES OF MUNICIPAL OFFICERS AND EMPLOYEES

SUBCHAPTER A. COMPENSATION, EXPENSES, AND PAYROLL DEDUCTIONS

- Sec. 141.008. Payroll Deductions in Certain Municipalities.
Sec. 141.009. Definitions.

SUBCHAPTER B. COMPENSATION OF MEMBERS OF FIRE AND POLICE DEPARTMENTS IN CERTAIN MUNICIPALITIES

- Sec. 141.031. Base Salary.
Sec. 141.032. Longevity Pay.
Sec. 141.033. Classification of Positions; Salary Schedule.
Sec. 141.034. Petition to Increase Salaries.
Sec. 141.035. Penalty.

SUBCHAPTER A. COMPENSATION, EXPENSES, AND PAYROLL DEDUCTIONS

§ 141.008. Payroll Deductions in Certain Municipalities

(a) The governing body of a municipality with a population of more than 10,000 may deduct from a municipal employee's monthly salary or wages an amount requested in writing by the employee in payment of membership dues to a bona fide employees' association named by the employee.

(a-1) The governing body shall make the payroll deduction described by Subsection (a) if requested in writing by employees who are fire protection personnel as defined by Section 419.021, Government Code, if the municipality receives revenue from the state, and if the municipality permits deductions for purposes other than charity, health insurance, taxes, or other purposes for which the municipality is required by law to permit a deduction.

(b) Participation in the payroll deduction program by a municipal employee who is on active full-time duty is voluntary.

(c) An employee's written request must:

- (1) be set out in a form prescribed and provided by the municipal treasurer or comptroller
- (2) state the amount to be deducted each month; and
- (3) direct the municipal treasurer or comptroller to transfer the deducted funds to the designated employees' association.

(d) The amount deducted each month may not exceed the amount stated in the written request. However, the governing body of a municipality having a program under this section may impose and collect an administrative fee from each participating employee in addition to the membership dues that are withheld. The fee must be a reasonable amount to reimburse the municipality for the administrative costs of collecting, accounting for, and disbursing the membership dues.

(e) A request under this section remains in effect until the municipal treasurer or comptroller receives a written notice of revocation in a form prescribed and provided by the treasurer or comptroller and filed by the employee.

§ 141.009. Definitions

(a) In this chapter, "member of the fire department" means an employee of the fire department who is defined as "fire protection personnel" by Section 419.021, Government Code.

(b) In this chapter, "member of the police department" means an employee of the police department who has been licensed as a peace officer by the Commission on Law Enforcement Officer Standards and Education.

SUBCHAPTER B. COMPENSATION OF MEMBERS OF FIRE AND POLICE DEPARTMENTS IN CERTAIN MUNICIPALITIES

§ 141.031. Base Salary

(a) In a municipality with a population of 10,000 to 40,000, each member of the fire or police department is entitled to receive a salary of at least \$165 a month.

(b) In a municipality with a population of 40,001 to 100,000, each member of the fire or police department is entitled to receive a salary of at least \$195 a month.

(c) In a municipality with a population of 100,001 to 175,000, each member of the fire or police department is entitled to receive a salary of at least \$210 a month.

(d) In a municipality with a population of more than 175,000, each member of the fire or police department is entitled to receive a salary of at least \$220 a month.

§ 141.032. Longevity Pay

In a municipality with a population of 10,000 or more, each member of the fire or police department 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.

§ 141.033. Classification of Positions; Salary Schedule

(a) Each municipality affected by this subchapter shall classify all positions in its fire and police departments and shall specify the duties and prescribe the salary for each classification.

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

§ 141.034. Petition to Increase Salaries

(a) The qualified voters of a municipality with a population of more than 10,000, may petition the governing body of the municipality in accordance with this section to increase the minimum salary of each member of the fire or police department.

(b) A petition under this section must:

(1) state the amount of the proposed minimum salary for each rank, pay grade, or classification;

(2) state the effective date of the proposed salary increase;

(3) designate five qualified voters to act as a committee of petitioners authorized to negotiate with the governing body of the municipality under Subsection (g); and

(4) be signed by a number of qualified voters equal to at least 25 percent of the voters who voted in the most recent municipal election.

(c) When a petition is filed under this section, the governing body shall:

(1) adopt the proposed minimum salary stated in the petition;

(2) offer an alternative minimum salary proposal under Subsection (g); or

(3) call an election on the proposed minimum salary as provided by this section.

(d) If the governing body chooses to call an election, the only issue that may be submitted is whether the proposed minimum salary should be adopted. The election shall be held on the first authorized uniform election date under Chapter 41, Election Code, that occurs after the 65th day after the date the petition was filed.

(e) The ballot for the election shall be printed to provide for voting for or against the proposition: "Adoption of the proposed minimum salaries of _____ applicable to _____." The proposed salary for each rank, pay grade, or classification, the affected department, and effective date of the proposed minimum salary as stated in the petition must be inserted in the blank spaces.

(f) If a majority of the votes cast at the election favor the adoption of the proposed minimum salary, the governing body of the municipality shall cause the minimum salary to take effect not later than the date specified in the petition as the effective date.

(g) If the governing body chooses to offer an alternative minimum salary proposal, the governing body shall confer with the committee of petitioners designated in the petition and offer the alternative salary proposal. If the committee accepts the alternative salary proposal, the governing body is not required to call an election.

(h) When an election has been held or an alternative salary proposal has been accepted under this section, a petition for another election under this section may not be filed until one year has elapsed after the date the election was held or the alternative salary proposal was accepted.

§ 141.035. Penalty

(a) A person who is a municipal official in a municipality with a population of 10,000 or more and who is in charge of the fire or police department or is responsible for setting the compensation provided by this subchapter commits an offense if the person violates this subchapter.

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

(c) Each day on which the municipal official causes or permits a violation of this subchapter to occur is a separate offense.

CHAPTER 142. ASSISTANCE, BENEFITS, AND WORKING CONDITIONS OF MUNICIPAL OFFICERS AND EMPLOYEES

SUBCHAPTER A. GENERAL PROVISIONS

- § 142.001. General Provisions Relating to Hours of Labor and Vacation of Members of Fire and Police Departments in Municipalities.
- § 142.0013. Hours of Labor and Vacation of Members of Fire and Police Departments in Certain Municipalities.
- § 142.0015. Hours of Labor and Vacation of Members of Fire and Police Departments in Municipality With Population of More Than 10,000.
- § 142.0016. Use of Compensatory Time by Members of Fire and Police Departments in Municipality With Population of More Than 10,000.
- § 142.004. Payment of Hospitalization Costs for Peace Officers and Fire Fighters.
- § 142.005. Liability Insurance for Fire and Police Department Officers and Employees Driving Emergency Vehicles.
- § 142.006. Motor Vehicle Liability Insurance for Peace Officers and Fire Fighters.
- § 142.008. Salary Continuation Payments; Subrogation.
- § 142.009. Payment for Court Appearances of Fire Fighters and Police Officers.
- § 142.010. Definitions.

SUBCHAPTER C. Local Control of Firefighter Employment Matters In Certain Municipalities

- § 142.101. Applicability
- § 142.102. Definitions
- § 142.103. Petition For Recognition: Election Or Action By Governing Body
- § 142.104. Certification Election
- § 142.105. Election to Authorize Operating Under This Subchapter
- § 142.106. Change or Modification of Recognition
- § 142.107. Strikes Prohibited
- § 142.108. Recognition of Fire Fighter's Association
- § 142.109. General Provisions Relating to Agreements
- § 142.110. Selection of Bargaining Agent; Bargaining Unit
- § 142.111. Protected Rights of Fire Fighter
- § 142.112. Open Records
- § 142.113. Open Deliberations
- § 142.114. Ratification and Enforceability of Agreement
- § 142.115. Action or Election to Repeal Authorization to Operate Under This Subchapter
- § 142.116. Election to Repeal Agreement
- § 142.117. Agreement Supersedes Conflicting Provisions
- § 142.118. Preemption of Other Law
- § 142.119. Effect on Existing Benefits

§ 142.001. General Provisions Relating to Hours of Labor and Vacation of Members of Fire and Police Departments in Municipalities

(a) In Sections 142.0013, 142.0015, and 142.0017, "work cycle" means the period in a posted work schedule starting at the time the cycle begins and ending at the time the cycle begins to repeat itself. The cycle may span any number of days or weeks or a part of a day or week.

(b) A provision of Section 142.0013, 142.0015, or 142.0017 does not apply if it is inconsistent with a collective bargaining agreement that was in effect on August 31, 1987, and was made in accordance with The Fire and Police Employee Relations Act (Article 5154cB1, Vernon's Texas Civil Statutes).

(c) Sections 142.0013 and 142.0015 do not prohibit the chief or head of a police department from assigning a police officer under the chief's or head's jurisdiction or supervision to work periods of uncompensated duty as prescribed by Section 143.055. A period of uncompensated duty may not be considered or otherwise taken into account in determining compliance with Section 142.0013 or 142.0015, and Section 142.0013 and Sections 142.0015(f), (g), (h), and (j) do not apply to or include periods of uncompensated duty to which a police officer is assigned.

(d) Sections 142.0013, 142.0015, and 142.0017 do not prevent a fire fighter or police officer from working extra hours when exchanging hours of work with another fire fighter or police officer with the consent of the department head.

(e) A municipal official having charge of a fire department or police department commits an offense if the official violates Section 142.0013, 142.0015, or 142.0017. An offense under this subsection is punishable by a fine of not less than \$10 or more than \$100. Each day on which the municipal official causes or permits the section to be violated constitutes a separate offense.

§ 142.0013. Hours of Labor and Vacation of Members of Fire and Police Departments in Certain Municipalities

(a) A member of a fire or police department in a municipality with a population of more than 25,000 may not, except in an emergency, be required to be on duty more than six days in a week.

(b) A member of a fire or police department in a municipality with a population of more than 30,000 is entitled to 15 vacation days each year with pay if the member has been regularly employed in the department or departments for at least one year. The municipal officials supervising the fire and police departments shall designate the days of the week during which a member of a fire department or police department is not required to be on duty and the days during which the member is allowed to be on vacation.

(c) A fire fighter and a police officer shall be granted the same number of vacation days and holidays, or days in lieu of vacation days or holidays, granted to other municipal employees.

§ 142.0015. Hours of Labor and Vacation of Members of Fire and Police Departments in Municipality With Population of More Than 10,000

(a) This section applies only in a municipality with a population of more than 10,000.

(b) A fire fighter or a member of a fire department who provides emergency medical services, other than the fire chief or the assistant chief or an equivalent classification, and who is required or permitted to work more than the number of hours that bears the same ratio to 212 hours as the number of days in the work period bears to 28 days is considered to have worked overtime. The person is entitled to be compensated for the overtime as provided by Subsection (e).

(c) A member of a fire department who does not fight fires or provide emergency medical services, including a mechanic, clerk, investigator, inspector, fire marshal, fire alarm dispatcher, and maintenance worker, other than the fire chief or the assistant chief or an equivalent classification, and who is required or permitted to average more hours in a week than the number of hours in a normal work week of the majority of the employees of the municipality other than fire fighters, emergency medical service personnel, and police officers, is considered to have worked overtime. The person is entitled to be compensated for the overtime as provided by Subsection (e).

(d) In computing the hours worked in a work week or the average number of hours worked in a work week during a work cycle of a fire fighter or other member of a fire department covered by this section, all hours are counted during which the fire fighter or other member of a fire department is required to remain on call on the employer's premises or so close to the employer's premises that the person cannot use those hours effectively for that person's own purposes. Hours in which the fire fighter or other member of a fire department is required only to leave a telephone number at which that person may be reached or to remain accessible by radio or pager are not counted. In computing the hours in a work week or the average number of hours in a work week during a work cycle of a fire fighter or a member of a fire department who provides emergency medical services, vacation, sick time, holidays, time in lieu of holidays, or compensatory time may be excluded as hours worked.

(e) A fire fighter or other member of a fire department may be required or permitted to work overtime. A fire fighter or other member of a fire department, other than the fire chief or the assistant chief or an equivalent classification, who is required or permitted to work overtime as provided by Subsections (b) and (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 the work cycle. Overtime hours are paid at a rate equal to 1-1/2 times the compensation paid to the fire fighter or member of the fire department for regular hours.

(f) Except as provided by Subsection (g) or (j), a police officer may not be required to work:

(1) more than 40 hours during a calendar week in a municipality that:

(A) has a population of more than one million;

(B) is not subject to Section 142.0017; and

(C) has not adopted Chapter 174; or

(2) in a municipality not described by Subdivision (1), more hours during a calendar week than the number of hours in the normal work week of the majority of the employees of the municipality other than fire fighters and police officers.

(f-1) In determining whether a police officer is considered to have been required to work overtime for purposes of Subsection (f) (1), all hours are counted during which the police officer:

(1) is required to remain available for immediate call to duty by continuously remaining in contact with a police department office by telephone or by radio;

(2) is taking any authorized leave, including attendance incentive leave, vacation leave, holiday leave, compensatory time off, jury duty, military leave, or leave because of a death in the family; and

(3) is considered to have worked under Subsection (h).

(g) In the event of an emergency, a police officer may be required to work more hours than permitted by Subsection (f). An emergency is an unexpected happening or event or an unforeseen situation or crisis that calls for immediate action and requires the chief or head of the police department to order a police officer to work overtime.

(h) An officer required to work overtime in an emergency is entitled to be compensated for the overtime at a rate equal to 1-1/2 times the compensation paid to the officer for regular hours unless the officer elects, with the approval of the governing body of the municipality, to accept compensatory time equal to 1-1/2 times the number of overtime hours. For purposes of this subsection, compensable hours of work include all hours during which a police officer is:

(1) on duty on the premises of the municipality or at a prescribed workplace or required or permitted to work for the municipality, including preshift and postshift activities that are:

(A) an integral part of the officer's principal activity; or

(B) closely related to the performance of the principal activity; and

(2) away from the premises of the municipality under conditions that are so circumscribed

that the officer is restricted from effectively using the time for personal pursuits.

(i) Bona fide meal periods are not counted as hours worked. For a bona fide meal period, which does not include coffee breaks or time for snacks, a police officer must be completely relieved from duty. Ordinarily, 30 minutes or more is long enough for a bona fide meal period. A period shorter than 30 minutes may be long enough for a bona fide meal period under special conditions. A police officer is not relieved from duty if the officer is required to perform any duties, whether active or inactive, during the meal period.

(j) If a majority of police officers working for a municipality sign a written waiver of the prohibition in Subsection (f), the municipality may adopt a work schedule for police officers requiring a police officer to work more hours than permitted by Subsection (f). The officer is entitled to overtime pay if the officer works more hours during a calendar month than the number of hours in the normal work month of the majority of the employees of the municipality other than fire fighters and police officers.

§ 142.0016. Use of Compensatory Time by Members of Fire and Police Departments in Municipality With Population of More Than 10,000

(a) This section applies only in a municipality with a population of less than 1.5 million that is eligible to adopt civil service under Chapter 143.

(b) A fire fighter or police officer may, with the approval of the governing body of the municipality, accept instead of overtime pay compensatory time at a rate equal to 1-1/2 times the number of overtime hours.

(c) A fire fighter or police officer may use compensatory time only when both the fire fighter or police officer and the municipality agree the time may be used.

(d) A municipality may at any time pay a fire fighter or police officer for all or part of the person's accumulated compensatory time if both the fire fighter or police officer and the municipality agree the time may be paid.

(e) If full payment for a fire fighter's or police officer's accumulated compensatory time would exceed 10 percent of the person's annual salary, the municipality may at its option defer payment of the amount in excess of 10 percent until the first pay period of the next fiscal year.

(f) A municipality shall pay for accumulated compensatory time at a rate equal to the fire fighter's or police officer's salary at the time the payment is made or at the time the payment was requested, whichever is greater.

(g) If a fire fighter or police officer dies or terminates employment for any reason, the municipality shall pay to the fire fighter or police officer or to his estate the total value of all the fire fighter's or police officer's accumulated compensatory time.

§ 142.004. Payment of Hospitalization Costs for Peace Officers and Fire Fighters

(a) In this section, "peace officer" means a peace officer as defined by Article 2.12, Code of Criminal Procedure.

(b) If a peace officer or fire fighter employed by a municipality sustains an injury in the performance of the person's duties that results in permanent incapacity for work and requires constant confinement in a hospital or other institution providing medical treatment, the municipality may pay all costs of the confinement in excess of amounts that are paid under a policy of insurance or by another governmental entity.

(c) To the extent this section permits payments, the municipality is subrogated to the rights of the peace officer or fire fighter in a suit against a third party because of the injury.

(d) To receive funds under this section, a peace officer or fire fighter must furnish the governing body of the municipality:

(1) proof that the injury was sustained in the performance of the person's duties resulting in permanent incapacity for work and requiring constant confinement for medical treatment;

(2) proof of the part of the cost of confinement not paid under a policy of insurance or by another governmental entity; and

(3) any other information or evidence required by the governing body.

(e) This section does not permit payment of costs of constant confinement for medical treatment incurred before August 27, 1973.

§ 142.005. Liability Insurance for Fire and Police Department Officers and Employees Driving Emergency Vehicles

(a) A municipality may insure the officers and employees of its fire and police departments and other municipal employees who drive emergency vehicles against liability to third persons arising from the use and operation of a motor vehicle used as a municipal emergency medical, fire, or police vehicle in the line of duty by procuring a policy for that purpose from an insurance company authorized to do business in this state.

(b) Insurance taken out by a municipality must be on forms approved by the State Board of Insurance.

(c) A municipality may not purchase liability insurance in excess of \$20,000 because of bodily injury to or death of one person in any one accident, \$100,000 because of bodily injury to or death of two or more persons in any one accident, and \$15,000 because of injury to or destruction of property of others in any one accident.

§ 142.006. Motor Vehicle Liability Insurance for Peace Officers and Fire Fighters

(a) This section does not apply to a municipality covered by Section 142.007.

(b) A municipality shall provide for insuring each peace officer and fire fighter in its employ against liability to third persons arising out of the operation, maintenance, or use of a motor vehicle owned or leased by the municipality.

(c) The liability coverage provided under this section must be in amounts not less than those required by Chapter 601, Transportation Code, to provide proof of financial responsibility.

(d) The municipality may elect to be self-insured or to reimburse the actual cost of extended automobile liability insurance endorsements obtained by a peace officer and fire fighter on an individually owned automobile liability insurance policy. The extended endorsements must:

(1) be in the amount required by Subsection (c); and

(2) extend the coverage to include the operation and use of vehicles by a peace officer or fire fighter in the scope of the officer's or fire fighter's employment.

(e) If the reimbursement method is used, the municipality may require that a peace officer or fire fighter who operates and uses a motor vehicle present proof that an extended coverage endorsement has been purchased and is in effect for the period of reimbursement.

(f) In this section, "motor vehicle" means any motor vehicle for which motor vehicle automobile insurance may be written under Subchapter A, Chapter 5, Insurance Code¹.

§ 142.008. Salary Continuation Payments; Subrogation

(a) If a municipality pays benefits to a municipal employee under a salary continuation program when the employee is injured, the municipality is subrogated to the employee's right of recovery for personal injuries caused by the tortious conduct of a third party other than another employee of the same municipality.

- (b) The subrogation extends only to payments made by the municipality.
- (c) A municipality may not deny benefits under a salary continuation program because a municipal employee has a cause of action against a third party for personal injuries.

§ 142.009. Payment for Court Appearances of Fire Fighters and Police Officers

(a) A municipality shall pay a fire fighter or police officer for an appearance as a witness in a criminal suit or a civil suit in which the municipality or other political subdivision or government agency is a party in interest if the appearance:

- (1) is required;
- (2) is made on time off; and
- (3) is made by the fire fighter or police officer in the capacity of a fire fighter or police officer.

(b) Payment under this section is at the fire fighter's or police officer's regular rate of pay.

(c) Payment under this section may be taxed as court costs in civil suits.

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

§ 142.010. Definitions

(a) In this chapter, "member of the fire department" means an employee of the fire department who is defined as "fire protection personnel" by Section 419.021, Government Code.

(b) In this chapter, "member of the police department" means an employee of the police department who has been licensed as a peace officer by the Commission on Law Enforcement Standards and Education.

SUBCHAPTER C. LOCAL CONTROL OF FIREFIGHTER EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES

§ 142.101. APPLICABILITY

(a) Except as provided by Subsection (b), this subchapter applies only to a municipality:

- (1) with a population of 50,000 or more; or
- (2) that has adopted Chapter 143.

(b) This subchapter does not apply to a municipality that:

- (1) has adopted Chapter 174;
- (2) is covered by Subchapter H, I, or J, Chapter 143; or
- (3) has a population of one million or more and has not adopted Chapter 143.

§ 142.102. DEFINITIONS

In this subchapter:

(1) "Firefighter" means a person who is defined as fire protection personnel under Section 419.021, Government Code, and who is employed by a municipality.

(2) "Firefighters association" means an employee organization in which firefighters employed by a municipality participate that exists for the purpose, in whole or in part, of dealing with the municipality or public employer concerning grievances, labor disputes, wages, rates of pay, hours of work, or conditions of work affecting firefighters.

(3) "Public employer" means a municipality or the fire department of the municipality that is required to establish the wages, salaries, rates of pay, hours of work, working conditions, and other terms and conditions of employment of firefighters employed by the municipality.

§ 142.103. PETITION FOR RECOGNITION: ELECTION OR ACTION BY GOVERNING BODY

(a) Not later than the 30th day after the date the governing body of a municipality receives from a firefighters association a petition signed by the majority of all firefighters, excluding the head of the fire department for the municipality and excluding the employees exempt under Section 142.108(b), that requests recognition of the association as the sole and exclusive bargaining agent for all the firefighters employed by the municipality, excluding the head of the fire department for the municipality and excluding the exempt employees, the governing body shall:

(1) grant recognition of the association as requested in the petition and determine by majority vote regarding whether a public employer may meet and confer under this subchapter without conducting an election by the voters in the municipality under Section 142.105;

(2) defer granting recognition of the association and order an election by the voters in the municipality under Section 142.105 regarding whether a public employer may meet and confer under this subchapter; or

(3) order a certification election under Section 142.104 to determine whether the association represents a majority of the affected firefighters.

(b) If the governing body of a municipality orders a certification election under Subsection (a)(3) and the association named in the petition is certified to represent a majority of the affected firefighters of the municipality, the governing body shall, not later than the 30th day after the date that results of that election are certified:

(1) grant recognition of the association as requested in the petition for recognition and determine by majority vote that a public employer may meet and confer under this subchapter without conducting an election by the voters in the municipality under Section 142.105; or

(2) defer granting recognition of the association and order an election by the voters in the municipality under Section 142.105 regarding whether a public employer may meet and confer under this subchapter.

§ 142.104. CERTIFICATION ELECTION

(a) Except as provided by Subsection (b), a certification election ordered under Section 142.103(a) (3) to determine whether a firefighters association represents a majority of the covered firefighters shall be conducted according to procedures agreeable to the parties.

(b) If the parties are unable to agree on procedures for the certification election, either party may request the American Arbitration Association to conduct the election and to certify the results of the election.

(c) Certification of the results of an election under this section resolves the question concerning representation.

(d) The association is liable for the expenses of the certification election, except that if two or more associations seeking recognition as the sole and exclusive bargaining agent submit a petition signed by at least 30 percent of the firefighters eligible to sign the petition for recognition, all the associations named in any petition shall share equally the costs of the election.

§ 142.105. ELECTION TO AUTHORIZE OPERATING UNDER THIS SUBCHAPTER

(a) The governing body of a municipality that receives a petition for recognition under Section 142.103 may order an election to determine whether a public employer may meet and confer under this subchapter.

(b) An election ordered under this section must be held as part of the next regularly scheduled general election for municipal officials that is held after the date the governing body of the municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

(c) The ballot for an election ordered under this section shall be printed to allow voting for or against the proposition: "Authorizing _____ (name of the municipality) to operate under the

state law allowing a municipality to meet and confer and make agreements with the association representing municipal firefighters as provided by state law, preserving the prohibition against strikes and organized work stoppages, and providing penalties for strikes and organized work stoppages."

(d) An election called under this section must be held and the returns prepared and canvassed in conformity with the Election Code.

(e) If an election authorized under this section is held, the municipality may operate under the other provisions of this subchapter only if a majority of the votes cast at the election favor the proposition.

(f) If an election authorized under this section is held, an association may not submit a petition for recognition to the governing body of the municipality under Section 142.103 before the second anniversary of the date of the election.

§ 142.106. CHANGE OR MODIFICATION OF RECOGNITION

(a) The firefighters may modify or change the recognition of the association granted under this subchapter by filing with the governing body of the municipality a petition signed by a majority of all covered firefighters.

(b) The governing body of the municipality may:

(1) recognize the change or modification as provided by the petition; or

(2) order a certification election in accordance with Section 142.104 regarding

whether to do so.

§ 142.107. STRIKES PROHIBITED

(a) A firefighter employed by a municipality may not engage in a strike or organized work stoppage against this state or the municipality.

(b) A firefighter who participates in a strike forfeits any civil service rights, reemployment rights, and other rights, benefits, or privileges the firefighter may have as a result of the person's employment or prior employment with the municipality.

(c) This section does not affect the right of a person to cease work if the person is not acting in concert with others in an organized work stoppage.

§ 142.108. RECOGNITION OF FIREFIGHTERS ASSOCIATION

(a) A public employer in a municipality that chooses to meet and confer under this subchapter shall recognize an association that is recognized under Section 142.103 or 142.104 as the sole and exclusive bargaining agent for the covered firefighters described in the petition for recognition, excluding the head of the fire department and excluding the employees exempt under Subsection (b), in accordance with this subchapter and the petition.

(b) For the purposes of Subsection (a), exempt employees are the employees appointed by the head of the fire department of the municipality under Section 143.014 or that are exempt by the mutual agreement of the recognized firefighters association and the public employer.

(c) The public employer shall recognize the firefighters association until recognition of the association is withdrawn, in accordance with Section 142.106, by a majority of the firefighters eligible to sign a petition for recognition.

§ 142.109. GENERAL PROVISIONS RELATING TO AGREEMENTS

(a) A municipality acting under this subchapter may not be denied local control over the wages, salaries, rates of pay, hours of work, or other terms and conditions of employment to the extent the public employer and the firefighters association recognized as the sole and exclusive bargaining agent under this subchapter agree as provided by this subchapter, if the agreement is ratified and

not withdrawn in accordance with this subchapter. Applicable statutes and applicable local orders, ordinances, and civil service rules apply to an issue not governed by the meet and confer agreement.

(b) A meet and confer agreement under this subchapter must be written.

(c) This subchapter does not require a public employer or a recognized firefighters association to meet and confer on any issue or reach an agreement.

(d) A public employer and the recognized firefighters association may meet and confer only if the association does not advocate an illegal strike by public employees.

(e) While a meet and confer agreement under this subchapter between the public employer and the recognized firefighters association is in effect, the public employer may not accept a petition, with regard to the firefighters of the municipality requesting an election to adopt:

(1) municipal civil service under Chapter 143; or

(2) collective bargaining under Chapter 174.

§ 142.110. SELECTION OF BARGAINING AGENT; BARGAINING UNIT

(a) The public employer's chief executive officer or the chief executive officer's designee shall select one or more persons to represent the public employer as its sole and exclusive bargaining agent to meet and confer on issues related to the wages, hours of employment, and other terms and conditions of employment of firefighters by the municipality.

(b) A firefighters association may designate one or more persons to negotiate or bargain on the association's behalf.

(c) A municipality's bargaining unit is composed of all the firefighters of the municipality who are not the head of the fire department or exempt under Section 142.108(b).

§142.111. PROTECTED RIGHTS OF FIREFIGHTER

(a) For any disciplinary appeal, a member of the municipality's bargaining unit may be represented by the firefighters association or by any person the member selects.

(b) A meet and confer agreement ratified under this subchapter may not interfere with the right of a member of a bargaining unit to pursue allegations of discrimination based on race, creed, color, national origin, religion, age, sex, or disability with the Texas Workforce Commission civil rights division or the federal Equal Employment Opportunity Commission or to pursue affirmative action litigation.

§ 142.112. OPEN RECORDS

(a) A proposed meet and confer agreement and a document prepared and used by the municipality, including a public employer, in connection with the proposed agreement are available to the public under Chapter 552, Government Code, only after the agreement is ready to be ratified by the governing body of the municipality.

(b) This section does not affect the application of Subchapter C, Chapter 552, Government Code, to a document prepared and used in connection with the agreement.

§ 142.113. OPEN DELIBERATIONS

(a) A deliberation relating to meeting and conferring between a public employer and a firefighters association, a deliberation relating to an agreement or proposed agreement under this subchapter by a quorum of a firefighters association authorized to meet and confer, or a deliberation by a quorum of the sole and exclusive bargaining agent of the public employer authorized to meet and confer must be open to the public and comply with state law.

(b) Subsection (a) may not be construed to prohibit the representative of the public employer or the representatives of the firefighters association from conducting private caucuses

that are not open to the public during meet and confer negotiations.

§ 142.114. RATIFICATION AND ENFORCEABILITY OF AGREEMENT

(a) An agreement under this subchapter is enforceable and binding on the public employer, the recognized firefighters association, and the firefighters covered by the meet and confer agreement only if:

(1) the governing body of the municipality ratified the agreement by a majority vote;

and

(2) the recognized firefighters association ratified the agreement by conducting a secret ballot election at which only the firefighters of the municipality in the association were eligible to vote, and a majority of the votes cast at the election favored ratifying the agreement.

(b) A meet and confer agreement ratified as described by Subsection (a) may establish a procedure by which the parties agree to resolve disputes related to a right, duty, or obligation provided by the agreement, including binding arbitration on a question involving interpretation of the agreement.

(c) A state district court of a judicial district in which the municipality is located has jurisdiction to hear and resolve a dispute under the ratified meet and confer agreement on the application of a party to the agreement aggrieved by an action or omission of the other party when the action or omission is related to a right, duty, or obligation provided by the agreement. The court may issue proper restraining orders, temporary and permanent injunctions, or any other writ, order, or process, including contempt orders, that are appropriate to enforcing the agreement.

§ 142.115. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO OPERATE UNDER THIS SUBCHAPTER

(a) The governing body of a municipality that granted recognition of a firefighters association under Section 142.103 without conducting an election under Section 142.105 may withdraw recognition of the association by providing to the association not less than 90 days' written notice that:

(1) the governing body is withdrawing recognition of the association; and

(2) any agreement between the governing body and the association will not be

renewed.

(b) The governing body of a municipality that granted recognition of a firefighters association after conducting an election under Section 142.105 may order an election to determine whether a public employer may continue to meet and confer under this subchapter. The governing body may not order an election under this subsection until the second anniversary of the date of the election under Section 142.105.

(c) An election ordered under Subsection (b) must be held as part of the next regularly scheduled general election for municipal officers that occurs after the date the governing body of the municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

(d) The ballot for an election ordered under Subsection (b) shall be printed to allow voting for or against the proposition: "Authorizing _____ (name of municipality) to continue to operate under the state law allowing a municipality to meet and confer and make agreements with the association representing municipal firefighters as provided by state law, preserving the prohibition against strikes and organized work stoppages, and providing penalties for strikes and organized work stoppages."

(e) An election ordered under Subsection (b) must be held and the returns prepared and canvassed in conformity with the Election Code.

(f) If an election ordered under Subsection (b) is held, the municipality may continue to

operate under this subchapter only if a majority of the votes cast at the election favor the proposition.

(g) If an election ordered under Subsection (b) is held, an association may not submit a petition for recognition to the governing body of the municipality under Section 142.103 before the second anniversary of the date of the election.

§ 142.116. ELECTION TO REPEAL AGREEMENT

(a) Not later than the 60th day after the date a meet and confer agreement is ratified by the governing body of the municipality and the recognized firefighters association, a petition calling for the repeal of the agreement signed by a number of registered voters residing in the municipality equal to at least 10 percent of the votes cast at the most recent general election held in the municipality may be presented to the person charged with ordering an election under Section 3.004, Election Code.

(b) If a petition is presented under Subsection (a), the governing body of the municipality shall:

(1) repeal the meet and confer agreement; or

(2) certify that it is not repealing the agreement and call an election to determine whether to repeal the agreement.

(c) An election called under Subsection (b)(2) may be held as part of the next regularly scheduled general election for the municipality. The ballot shall be printed to provide for voting for or against the proposition: "Repeal the meet and confer agreement ratified on _____ (date agreement was ratified) by the _____ (name of the governing body of the municipality) and the firefighters employed by the City of _____ (name of municipality) concerning wages, salaries, rates of pay, hours of work, and other terms of employment."

(d) If a majority of the votes cast at the election favor the repeal of the agreement, the agreement is void.

§ 142.117. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS

A written meet and confer agreement ratified under this subchapter preempts, during the term of the agreement and to the extent of any conflict, all contrary state statutes, local ordinances, executive orders, civil service provisions, or rules adopted by the head of the fire department or municipality or by a division or agent of the municipality, such as a personnel board or a civil service commission.

§ 142.118. PREEMPTION OF OTHER LAW

(a) This subchapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by a municipality.

(b) Section 617.002, Government Code, does not apply to an agreement made or an action taken under this subchapter.

§ 142.119. EFFECT ON EXISTING BENEFITS

This subchapter may not be construed as repealing any existing benefit provided by statute or ordinance concerning firefighters' compensation, pensions, retirement plans, hours of work, conditions of employment, or other emoluments, except as expressly provided in a ratified meet and confer agreement. This subchapter is in addition to the benefits provided by existing statutes and ordinances.

CHAPTER 143. MUNICIPAL CIVIL SERVICE

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 143.001. Purpose.
- Sec. 143.002. Municipalities Covered by Chapter.
- Sec. 143.003. Definitions.
- Sec. 143.004. Election to Adopt or Repeal Chapter.
- Sec. 143.005. Status of Employees if Chapter Adopted.
- Sec. 143.0051. Classification of Civilian Employees
- Sec. 143.006. Implementation: Commission.
- Sec. 143.007. Removal of Commission Member.
- Sec. 143.008. Adoption and Publication of Rules.
- Sec. 143.009. Commission Investigations and Inspections.
- Sec. 143.010. Commission Appeal Procedure.
- Sec. 143.011. Decisions and Records.
- Sec. 143.012. Director.
- Sec. 143.013. Appointment and Removal of Department Head.
- Sec. 143.014. Appointment and Removal of Person Classified Immediately Below Department Head.
- Sec. 143.015. Appeal of Commission Decision to District Court
- Sec. 143.016. Penalty for Violation of Chapter.
(Sections 143.017 to 143.020 reserved for expansion)

SUBCHAPTER B. CLASSIFICATION AND APPOINTMENT

- Sec. 143.021. Classification; Examination Requirement.
- Sec. 143.022. Physical Requirements and Examinations.
- Sec. 143.023. Eligibility for Beginning Position.
- Sec. 143.024. Entrance Examination Notice.
- Sec. 143.025. Entrance Examinations.
- Sec. 143.0251. Reappointment After Resignation.
- Sec. 143.026. Procedure for Filling Beginning Positions.
- Sec. 143.027. Probationary Period.
- Sec. 143.028. Eligibility for Promotion.
- Sec. 143.029. Promotional Examination Notice.
- Sec. 143.030. Eligibility for Fire Department Promotional Examination.
- Sec. 143.031. Eligibility for Police Department Promotional Examination.
- Sec. 143.032. Promotional Examination Procedure.
- Sec. 143.033. Promotional Examination Grades.
- Sec. 143.034. Review and Appeal of Promotional Examination.
- Sec. 143.035. Alternate Promotional System in Police Department.
- Sec. 143.036. Procedure for Making Promotional Appointments.
- Sec. 143.037. Record of Certification and Appointment.
- Sec. 143.038. Temporary Duties in Higher Classification.
(Section 143.039 to 143.040 reserved for expansion)

SUBCHAPTER C. COMPENSATION

- Sec. 143.041. Salary.
- Sec. 143.042. Assignment Pay.
- Sec. 143.043. Field Training Officer Assignment Pay.
- Sec. 143.044. Certification, Educational and Physical Fitness Incentive Pay.
- Sec. 143.045. Accumulation and Payment of Sick Leave.
- Sec. 143.046. Vacations.
- Sec. 143.047. Shift Differential Pay.
(Section 143.048 to 143.050 reserved for expansion)

SUBCHAPTER D. DISCIPLINARY ACTIONS

- Sec. 143.051. Cause for Removal or Suspension.
- Sec. 143.052. Disciplinary Suspensions.
- Sec. 143.053. Appeal of disciplinary Suspension.
- Sec. 143.054. Demotions.
- Sec. 143.055. Uncompensated Duty of Police Officers.
- Sec. 143.056. Procedures After Felony Indictment or Misdemeanor Complaint.
- Sec. 143.057. Hearing Examiners.
(Sections 143.058 to 143.070 reserved for expansion)

SUBCHAPTER E. LEAVES

- Sec. 143.071. Leaves of Absence; Restriction Prohibited.
- Sec. 143.072. Military Leave of Absence.
- Sec. 143.073. Line of Duty Illness or Injury Leave of Absence.
- Sec. 143.074. Reappointment After Recovery From Disability.
- Sec. 143.075. Military Leave Time Accounts
(Sections 143.076 to 143.080 reserved for expansion)

SUBCHAPTER F. MISCELLANEOUS PROVISIONS

- Sec. 143.081. Determination of Physical and Mental Fitness.
- Sec. 143.082. Efficiency Reports.
- Sec. 143.083. Emergency Appointment of Temporary Fire Fighters and Police Officers.
- Sec. 143.084. Civil Service Status and Pension Benefits for Certain Fire Fighters and Police Officers.
- Sec. 143.085. Force Reduction and Reinstatement List.
- Sec. 143.086. Political Activities.
- Sec. 143.087. Strike Prohibition.
- Sec. 143.088. Unlawful Resignation or Retirement.
- Sec. 143.089. Personnel File.
(Sections 143.090 to 143.100 reserved for expansion)

SUBCHAPTER I. FIRE FIGHTER AND POLICE OFFICER EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES.

Sec. 143.301.	Municipalities Covered by Subchapter
Sec. 143.3015	Limitation on Municipalities Covered by Subchapter: Voter Approval
Sec. 143.302.	Definitions
Sec. 143.303.	General Provisions Relating to Agreements, Recognition, and Strikes
Sec. 143.304.	Recognition of Fire Fighters or Police Officers Association
Sec. 143.305.	Open Records Required
Sec. 143.306.	Enforceability of Agreement
Sec. 143.307.	Agreement Supersedes Conflicting Provisions
Sec. 143.308.	Repeal of Agreement by Electorate
Sec. 143.309.	Protected Rights of Individual Employees
Sec. 143.310.	Binding Interest Arbitration
Sec. 143.311.	Appointments to Classification Immediately Below Department Head
Sec. 143.312.	Investigation of Fire Fighters and Police Officers
Sec. 143.313.	Polygraph Examinations

SUBCHAPTER A. GENERAL PROVISIONS

§ 143.001. Purpose

(a) The purpose of this chapter is to secure efficient fire and police departments composed of capable personnel who are free from political influence and who have permanent employment tenure as public servants.

(b) The members of the Fire Fighters' and Police Officers' Civil Service Commission shall administer this chapter in accordance with this purpose.

§ 143.002. Municipalities Covered by Chapter

(a) This chapter applies only to a municipality:

- (1) that:
 - (A) has a population of 10,000 or more;
 - (B) has a paid fire department or police department; and
 - (C) has voted to adopt this chapter or the law codified by this chapter; or
- (2) whose election to adopt this chapter and whose acts subsequent to that election were validated by the law enacted by House Bill 822, Acts of the 73rd Legislature, Regular Session, 1993.

(b) Population under Subsection (a)(1) is determined by the most recent:

- (1) federal decennial census; or
- (2) annual population estimate provided by the state demographer under Chapter 468, Government Code, if that estimate is more recent than the most recent federal decennial census.

(c) If this chapter applies to a municipality as provided by Subsection (a), the application of this chapter to the municipality is not affected if the municipality's population changes and the municipality no longer meets the population requirement of Subsection (a)(1).

§ 143.003. Definitions

In this chapter:

- (1) "Commission" means the Fire Fighters' and Police Officers' Civil Service Commission.
- (2) "Department head" means the chief or head of a fire or police department or that person's equivalent, regardless of the name or title used.
- (3) "Director" means the director of fire fighters' and police officers' civil service.
- (4) "Fire fighter" means a member of a fire department who was appointed in substantial compliance with this chapter or who is entitled to civil service status under Section 143.005 or 143.084. The term:

(A) applies only to an employee of a fire department whose position requires substantial knowledge of fire fighting and who has met the requirements for certification by the Texas Commission on Fire Protection under Chapter 419, Government Code, including an employee who performs:

- (i) fire suppression;
- (ii) fire prevention;
- (iii) fire training;
- (iv) fire safety education;
- (v) fire maintenance;
- (vi) fire communications;
- (vii) fire medical emergency technology;
- (viii) fire photography;
- (ix) fire administration; or
- (x) fire arson investigation; and

(B) does not apply to a secretary, clerk, budget analyst, custodial engineer, or other administrative employee.

(5) "Police officer" means a member of a police department or other peace officer who was appointed in substantial compliance with this chapter or who is entitled to civil service status under Section 143.005, 143.084, or 143.103.

§ 143.004. Election to Adopt or Repeal Chapter

(a) A municipality may hold an election to adopt or repeal this chapter as provided by this section.

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

(c) The ballot shall be printed to provide for voting for or against the proposition: "Adoption of the fire fighters' and police officers' civil service law." However, this chapter may be adopted to apply only to the fire or police department, and in that case, the ballot shall be printed to reflect the department that would be covered by this chapter. If a majority of the votes received in the election are in favor of adoption of this chapter, the governing body shall implement this chapter.

(d) 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. To be valid, a petition for a subsequent election must contain the signatures of a number of qualified voters of the municipality equal to at least 20 percent of the number of voters who voted in the most recent municipal election. Any subsequent election must be held at the next general municipal election that occurs after the petition is filed.

(e) If the governing body of a municipality 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 municipality, the governing body shall order an election submitting to the voters the question on whether this chapter should be repealed. If a majority of the qualified voters vote to repeal this chapter, this chapter is void in that municipality.

§ 143.005. Status of Employees if Chapter Adopted

(a) Each fire fighter or police officer serving in a municipality that adopts this chapter and who has been in the service of the municipality for more than six months at the time this chapter is adopted and who is entitled to civil service classification has the status of a civil service employee and is not required to take a competitive examination to remain in the position the person occupies at the time of the adoption.

(b) In a municipality that adopts this chapter, an employee of the fire department whose primary duties are to provide emergency medical services for the municipality is considered to be a fire fighter who is a member of the fire department performing fire medical emergency technology, entitled to civil service protection, and covered by this chapter.

§ 143.0051. STATUS OF EMPLOYEES IN CERTAIN FIRE DEPARTMENTS

(a) This section applies only to a fire department employee employed by a municipality with a population of 220,000 or more. This section does not apply to a fire department employee employed by a municipality:

- (1) that has adopted Chapter 174; or
- (2) to which Subchapter H or I applies.

(b) Notwithstanding any other provision of this chapter, a previously non-classified fire department employee who serves in a position described by Section 143.003(4)(B), (D), (G), or (J) has the status of a civil service employee and is not required to take a competitive examination to remain in the employee's position if:

(1) the employee was appointed to that position on or before May 1, 2005, and was serving in that position on the date described by Subsection (c); and

(2) the municipality's governing body by ordinance amends the municipality's existing classification of fire department employees to include the employee's position as provided by Section 143.021.

(c) The civil service status of an employee to which Subsection (b) applies is effective on the date that the ordinance amending the municipality's classification system to include the employee's position takes effect.

(d) A fire department employee who has civil service status under Subsection (b) may be promoted only:

(1) by competitive examination in accordance with the competitive civil service procedures prescribed in this chapter; and

(2) within the employee's existing division.

(e) A fire department employee who has civil service status under Subsection (b) may not:

(1) supervise or evaluate classified civil service personnel assigned to fire suppression or emergency medical operations; or

(2) laterally transfer to fire suppression or emergency medical operations.

(f) If a fire department employee who has civil service status under Subsection (b) leaves the employee's position for any reason, a person selected to fill that position must be selected in accordance with the competitive civil service procedures prescribed in this chapter.

143.0052. STATUS OF EMPLOYEES IN CERTAIN FIRE DEPARTMENTS.

(a) This section applies only to a fire department employee employed by a municipality with a population of 150,000 or more and with a governing body of five or fewer members.

(b) Notwithstanding any other provision of this chapter, a previously nonclassified fire department employee who serves in a position described by Section 143.003(4)(B), (D), (G), or (J) has the status of a civil service employee and is not required to take a competitive examination to remain in the employee's position if:

(1) the employee was appointed to that position on or before May 1, 2005, and was serving in that position on the date described by Subsection (c); and

(2) the municipality's governing body by ordinance amends the municipality's existing classification of fire department employees to include the employee's position as provided by Section 143.021.

(c) The civil service status of an employee to which Subsection (b) applies is effective on the date that the ordinance amending the municipality's classification system to include the employee's position takes effect.

(d) A fire department employee who has civil service status under Subsection (b) may be promoted only:

(1) by competitive examination in accordance with the competitive civil service procedures prescribed in this chapter; and

(2) within the employee's existing division.

(e) A fire department employee who has civil service status under Subsection (b) may not:

(1) supervise or evaluate classified civil service personnel assigned to fire suppression or emergency medical operations; or

(2) laterally transfer to fire suppression or emergency medical operations.

(f) If a fire department employee who has civil service status under Subsection (b) leaves the employee's position for any reason, a person selected to fill that position must be selected in accordance with the competitive civil service procedures prescribed in this chapter.

§ 143.006. Implementation: Commission

(a) On adoption of this chapter, the Fire Fighters' and Police Officers' Civil Service Commission is established in the municipality. The chief executive of the municipality shall appoint the members of the commission within 60 days after the date this chapter is adopted. Within 30 days after the date the municipality's first full fiscal year begins after the date of the adoption election, the governing body of the municipality shall implement this chapter.

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

(c) A person appointed to the commission must:

(1) be of good moral character;

(2) be a United States citizen;

(3) be a resident of the municipality who has resided in the municipality for more than three years;

(4) be over 25 years of age; and

(5) not have held a public office within the preceding three years.

(c-1) Notwithstanding Subsection (c)(5), the municipality's chief executive may reappoint a commission member to consecutive terms. A commission member may not be reappointed to more than a third consecutive term unless the member's reappointment to a fourth or subsequent consecutive term is confirmed by a two-thirds majority of all the members of the municipality's

governing body.

(c-2) Subsection (c)(5) does not prohibit the municipality's chief executive from appointing a former commission member to the commission if the only public office held by the former member within the preceding three years is membership on:

(1) the commission; or

(2) the commission and the municipality's civil service board for employees other than police officers and firefighters through a joint appointment to the commission and board.

(c-3) Subsections (c-1) and (c-2) do not apply to a municipality with a population of 1.5 million or more.

(d) In making initial appointments, the chief executive shall designate one member to serve a one-year term, one member to serve a two-year term, and one member to serve a three-year term. If a municipality has a civil service commission immediately before this chapter takes effect in that municipality, that civil service commission shall continue as the commission established by this section and shall administer the civil service system as prescribed by this chapter. As the terms of the members of the previously existing commission expire, the chief executive shall appoint members as prescribed by this section. If necessary to create staggered terms as prescribed by this section, the chief executive shall appoint the initial members, required to be appointed under this chapter, to serve terms of less than three years.

(e) Initial members shall elect a chairman and a vice-chairman within 10 days after the date all members have qualified. Each January, the members shall elect a chairman and a vice-chairman.

(f) The governing body of the municipality shall provide to the commission adequate and suitable office space in which to conduct business.

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

(h) The chief executive of a municipality or a municipal official commits an offense if the person knowingly or intentionally refuses to implement this chapter or attempts to obstruct the enforcement of this chapter. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 or more than \$200.

§ 143.007. Removal of Commission Member

(a) If at a meeting held for that purpose the governing body of the municipality finds that a commission member is guilty of misconduct in office, the governing body may remove the member. The member may request that the meeting be held as an open hearing in accordance with Chapter 551, Government Code.

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

(c) The governing body may appoint a substitute commission member during a period of suspension. If a member pleads guilty to or is found to be guilty of a criminal offense involving moral turpitude, the governing body shall appoint a replacement commission member to serve the remainder of the disqualified member's term of office.

§ 143.008. Adoption and Publication of Rules

(a) A commission shall adopt rules necessary for the proper conduct of commission business.

(b) The commission may not adopt a rule permitting the appointment or employment of a person who is:

- (1) without good moral character;
- (2) physically or mentally unfit; or
- (3) incompetent to discharge the duties of the appointment or employment.

(c) The commission shall adopt rules that prescribe cause for removal or suspension of a fire fighter or police officer. The rules must comply with the grounds for removal prescribed by Section 143.051.

(d) The commission shall publish each rule it adopts and each classification and seniority list for the fire and police departments. The rules and lists shall be made available on demand. A rule is considered to be adopted and sufficiently published if the commission adopts the rule by majority vote and causes the rule to be written, typewritten, or printed. Publication in a newspaper is not required and the governing body of the municipality is not required to act on the rule.

(e) A rule is not valid and binding on the commission until the commission:

- (1) mails a copy of the rule to the commissioner, if the municipality has an elected commissioner, and to department heads of the fire and police departments;
- (2) posts a copy of the rule for a seven-day period at a conspicuous place in the central fire and police stations; and
- (3) mails a copy of the rule to each branch fire station.

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

§ 143.009. Commission Investigations and Inspections

(a) The commission or a commission member designated by the commission may investigate and report on all matters relating to the enforcement and effect of this chapter and any rules adopted under this chapter and shall determine if the chapter and rules are being obeyed.

(b) During an investigation, the commission or the commission member may:

- (1) administer oaths;
- (2) issue subpoenas to compel the attendance of witnesses and the production of books, papers, documents, and accounts relating to the investigation; and
- (3) cause the deposition of witnesses residing inside or outside the state.

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

(d) 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) A person who fails to respond to a subpoena issued under this section commits an offense punishable as prescribed by Section 143.016.

§ 143.010. Commission Appeal Procedure

(a) Except as otherwise provided by this chapter, if a fire fighter or police officer wants to appeal to the commission from an action for which an appeal or review is provided by this chapter, the fire fighter or police officer need only file an appeal with the commission within 10 days after the date the action occurred.

(b) The appeal must include the basis for the appeal and a request for a commission hearing. The appeal must also contain a statement denying the truth of the charge as made, a statement taking exception to the legal sufficiency of the charge, a statement alleging that the recommended action does not fit the offense or alleged offense, or a combination of these statements.

(c) In each hearing, appeal, or review of any kind in which the commission performs an adjudicatory function, the affected fire fighter or police officer is entitled to be represented by

counsel or a person the fire fighter or police officer chooses. Each commission proceeding shall be held in public.

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

(e) The affected fire fighter or police officer may request the commission to subpoena any books, records, documents, papers, accounts, or witnesses that the fire fighter or police officer considers pertinent to the case. The fire fighter or police officer must make the request before the 10th day before the date the commission hearing will be held. If the commission does not subpoena the material, the commission shall, before the third day before the date the hearing will be held, make a written report to the fire fighter or police officer stating the reason it will not subpoena the requested material. This report shall be read into the public record of the commission hearing.

(f) Witnesses may be placed under the rule at the commission hearing.

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

(h) The commission shall maintain a public record of each proceeding with copies available at cost.

(i) In addition to the requirements prescribed by this section, an appeal to the commission in a municipality with a population of 1.5 million or more must meet the requirements prescribed by Section 143.1015.

§ 143.011. Decisions and Records

(a) Each concurring commission member shall sign a decision issued by the commission.

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

(c) Each rule, opinion, directive, decision, or order issued by the commission must be written and constitutes a public record that the commission shall retain on file.

§ 143.012. Director

(a) On adoption of this chapter, the office of Director of Fire Fighters' and Police Officers' Civil Service is established in the municipality. The commission shall appoint the director. The director shall serve as secretary to the commission and perform work incidental to the civil service system as required by the commission. The commission may remove the director at any time.

(b) A person appointed as director must meet each requirement for appointment to the commission prescribed by Section 143.006(c), except that in a municipality with a population of less than 1.5 million, the person is not required to meet the local residency requirement.

(c) A person appointed as director may be a commission member, a municipal employee, or some other person.

(d) The municipality's governing body shall determine the salary, if any, to be paid to the director.

(e) If, immediately before this chapter takes effect in a municipality, the municipality has a duly and legally constituted director of civil service, regardless of title, that director shall continue in office as the director established by this section and shall administer the civil service system as prescribed by this chapter.

§ 143.013. Appointment and Removal of Department Head

(a) Unless elected, each department head is:

(1) appointed by the municipality's chief executive and confirmed by the municipality's governing body; or

(2) in a municipality having an elected fire or police commissioner, appointed by the fire or

police commissioner in whose department the vacancy exists and confirmed by the municipality's governing body.

(b) A person appointed as head of a fire department must be eligible for certification by the Commission on Fire Protection Personnel Standards and Education at the intermediate level or its equivalent as determined by that commission and must have served as a fully paid fire fighter for at least five years. A person appointed as head of a police department must be eligible for certification by the Commission on Law Enforcement Officer Standards and Education at the intermediate level or its equivalent as determined by that commission and must have served as a bona fide law enforcement officer for at least five years.

(c) Except as provided by Subsection (d), if a person is removed from the position of department head, the person shall 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. The person retains all rights of seniority in the department.

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

§ 143.014. Appointment and Removal of Person Classified Immediately Below Department Head

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) If approved by the governing body of the municipality by resolution or ordinance, the head of a fire or police department in the municipality in which at least four classifications exist below the classification of department head may appoint each person occupying an authorized position in the classification immediately below that of department head, as prescribed by this section. The classification immediately below that of department head may include a person who has a different title but has the same pay grade.

(c) In a police department, the total number of persons appointed to the classification immediately below that of department head may not exceed the total number of persons, plus one, serving in that classification on January 1, 1983. In a fire department in a municipality having fewer than 300 certified fire fighters, the department head may appoint not more than one person to the classification immediately below that of department head. If a municipality has 300 to 600 certified fire fighters, the department head may appoint two persons to the classification. If a municipality has more than 600 certified fire fighters, the department head may appoint three persons to the classification. This subsection does not apply to a municipality that has adopted The Fire and Police Employee Relations Act (Article 5154cB1, Vernon's Texas Civil Statutes) unless the municipality specifically adopts the appointment procedure prescribed by this subsection through the collective bargaining process.

(d) A person appointed to a position in the classification immediately below that of the head of the police department must:

- (1) be employed by the municipality's police department as a sworn police officer;
- (2) have at least two years' continuous service in that department as a sworn police officer;

and

(3) meet the requirements for appointment as head of a police department prescribed by Section 143.013(b).

(e) A person appointed to a position in the classification immediately below that of the head of the fire department must:

- (1) be employed by the municipality's fire department;
- (2) have a permanent classification in at least an officer level; and
- (3) meet the requirements for appointment as head of a fire department prescribed by Section 143.013(b).

(f) The department head shall make each appointment under this section within 90 days after the date a vacancy occurs in the position.

(g) A person appointed under this section serves at the pleasure of the department head. A person who is removed from the position by the department head shall be reinstated in the department and placed in the same classification, or its equivalent, that the person held before appointment. The person retains all rights of seniority in the department.

(h) If a person appointed under this section is charged with an offense in violation of civil service rules and indefinitely suspended by the department head, the person has the same rights and privileges of a hearing before the commission in the same manner and under the same conditions as a classified employee. If the commission, a hearing examiner, or a court of competent jurisdiction finds the charges to be untrue or unfounded, the person shall immediately be restored to the same classification, or its equivalent, that the person held before appointment. The person has all the rights and privileges of the prior position according to seniority, and shall be repaid for any lost wages.

(i) A person serving under permanent appointment in a position in the classification immediately below that of the department head on September 1, 1983, is not required to meet the requirements of this section or to be appointed or reappointed as a condition of tenure or continued employment.

§ 143.015. Appeal of Commission Decision to District Court

(a) If a fire fighter or police officer is dissatisfied with any commission decision, the fire fighter or police officer may file a petition in district court asking that the decision be set aside. The petition must be filed within 10 days after the date the final commission decision:

- (1) is sent to the fire fighter or police officer by certified mail; or
- (2) is personally received by the fire fighter or police officer or by that person's designee.

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

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

(d) If the court finds for the fire fighter or police officer, the court shall order the municipality to pay lost wages to the fire fighter or police officer.

§ 143.016. Penalty for Violation of Chapter

(a) A fire fighter or police officer commits an offense if the person violates this chapter.

(b) An offense under this section or Section 143.009 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 fine and confinement.

SUBCHAPTER B. CLASSIFICATION AND APPOINTMENT

§ 143.021. Classification; Examination Requirement

(a) The commission shall provide for the classification of all fire fighters and police officers. The

municipality's governing body shall establish the classifications by ordinance. The governing body by ordinance shall prescribe the number of positions in each classification.

(b) Except for the department head and a person the department head appoints in accordance with Section 143.014 or 143.102, each fire fighter and police officer is classified as prescribed by this subchapter and has civil service protection. The failure of the governing body to establish a position by ordinance 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) Except as provided by Sections 143.013, 143.014, 143.0251, 143.102, and 143.1251, an existing position or classification or a position or classification created in the future either by name or by increase in salary may be filled only from an eligibility list that results from an examination held in accordance with this chapter.

§ 143.022. Physical Requirements and Examinations

(a) The commission shall set the age and physical requirements for applicants for beginning and promotional positions in accordance with this chapter. The requirements must be the same for all applicants.

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

(c) If an applicant is rejected by the physician, psychiatrist, or psychologist, as appropriate, the applicant may request another examination by a board of three physicians, psychiatrists, or psychologists, as appropriate, appointed by the commission. The applicant must pay for the board examination. The board's decision is final.

§ 143.023. Eligibility for Beginning Position

(a) A person may not take an entrance examination for a beginning position in the fire or police department unless the person is at least 18 years of age.

(b) A person may not be certified as eligible for a beginning position in a fire department if the person is 36 years of age or older.

(c) A person who is 45 years of age or older may not be certified for a beginning position in a police department.

(d) An applicant may not be 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 Commission on Fire Protection Personnel Standards and Education.

(e) An applicant may not be certified as eligible for a beginning position with a police department unless the applicant meets all legal requirements necessary to become eligible for future licensing by the Commission on Law Enforcement Officer Standards and Education.

(f) Each police officer and fire fighter affected by this chapter must be able to read and write English.

(g) In addition to meeting the requirements prescribed by this section, an applicant for a beginning position in a police department in a municipality with a population of 1.5 million or more must meet the requirements prescribed by Section 143.105.

§ 143.024. Entrance Examination Notice

(a) Before the 10th day before the date an entrance examination is held, the commission shall cause a notice of the examination to be posted in plain view on a bulletin board located in the main lobby of the city hall and in the commission's office. The notice must 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) The notice required by Subsection (a) must also state the period during which the eligibility list created as a result of the examination will be effective.

§ 143.025. Entrance Examinations

(a) The commission shall provide for open, competitive, and free entrance examinations to provide eligibility lists for beginning positions in the fire and police departments. The examinations are open to each person who makes a proper application and meets the requirements prescribed by this chapter.

(b) An eligibility list for a beginning position in the fire or police department may be created only as a result of a competitive examination held in the presence of each applicant for the position, except as provided by Subsections (d) and (e). The examination must be based on the person's general knowledge and aptitude and must inquire into the applicant's general education and mental ability. A person may not be appointed to the fire or police department except as a result of the examination.

(c) An applicant may not take an examination unless at least one other applicant taking the examination is present.

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

(e) This subsection applies only in a municipality to which Subchapter J does not apply. An examination for beginning positions in the police department must be held at one or more locations in the municipality in which the police department is located and may be held at additional locations outside the municipality. An examination held at multiple locations must be administered on the same day and at the same time at each location at which it is given. Only one eligibility list for a police department may be created from that examination, and only one eligibility list may be in effect at a given time. Each applicant who takes the examination for the eligibility list shall:

(1) take the same examination; and

(2) be examined in the presence of other applicants for that eligibility list.

(f) An additional five points shall 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.

(g) An applicant may not take the examination for a particular eligibility list more than once.

(h) The commission shall keep each eligibility list for a beginning position in effect for a period of not less than six months or more than 12 months, unless the names of all applicants on the list have been referred to the appropriate department. The commission shall determine the length of the period. The commission shall give new examinations at times the commission considers necessary to provide required staffing for scheduled fire or police training academies.

(i) The grade to be placed on the eligibility list for each applicant shall be computed by adding an applicant's points under Subsection (f), if any, to the applicant's grade on the written examination. Each applicant's grade on the written examination is based on a maximum grade of 100 percent and is determined entirely by the correctness of the applicant's answers to the questions. The minimum passing grade on the examination is 70 percent. An applicant must pass the examination to be placed on an eligibility list.

(j) Notwithstanding Subsection (i), each applicant who is either a natural-born or adopted child of a fire fighter who previously suffered a line-of-duty death while covered by this chapter shall be ranked at the top of any eligibility list in which said applicant receives a minimum passing grade on that respective eligibility exam. The deceased fire fighter's applicant child must otherwise satisfy all of the requirements for eligibility for a beginning position in a fire department contained in this

chapter. This commission shall promulgate rules to identify and verify each applicant's eligibility for applicability of this subsection.

(k) This section does not apply to a police department located in a municipality with a population of 1.5 million or more.

§ 143.0251. Reappointment After Resignation

The commission may adopt rules to allow a police officer who voluntarily resigns from the department to be reappointed to the department without taking another departmental entrance examination.

§ 143.026. Procedure for Filling Beginning Positions

(a) When a vacancy occurs in a beginning position in a fire or police department, the department head shall request in writing from the commission the names of suitable persons from the eligibility list. The director shall certify to the municipality's chief executive the names of the three persons having the highest grades on the eligibility list.

(b) From the three names certified, the chief executive shall 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) If the chief executive does not appoint the person having the highest grade, the chief executive shall clearly set forth in writing the good and sufficient reason why the person having the highest grade was not appointed.

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

§ 143.027. Probationary Period

(a) A person appointed to a beginning position in the fire or police department must serve a probationary period of one year beginning on that person's date of employment as a fire fighter, police officer, or academy trainee. In a municipality with a population of less than 1.9 million, the commission by rule may extend the probationary period by not more than six months for a person who:

(1) is not employed by a department in which a collective bargaining agreement or a meet-and-confer agreement currently exists or previously existed; and

(2) is required to attend a basic training academy for initial certification by the Texas Commission on Fire Protection or the Commission on Law Enforcement Officer Standards and Education.

(b) During a fire fighter's or police officer's probationary period, the department head shall discharge the person and remove the person from the payroll if the person's appointment was not regular or was not made in accordance with this chapter or the commission rules.

(c) During a fire fighter's or police officer's probationary period, the person may not be prohibited from joining or required to join an employee organization. Joining or not joining an employee organization is not a ground for retaining or not retaining a fire fighter or police officer serving a probationary period.

(d) A fire fighter or police officer who was appointed in substantial compliance with this chapter and who serves the entire probationary period automatically becomes a full-fledged civil service employee and has full civil service protection.

§ 143.028. Eligibility for Promotion

(a) Except as provided by Sections 143.013 and 143.102, a fire fighter is not eligible for promotion unless the person has served in that fire department in the next lower position or other positions specified by the commission for at least two years at any time before the date the promotional examination is held. A fire fighter 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) Except as provided by Sections 143.013 and 143.102, a police officer is not eligible for promotion unless the person has served in that police department in the next lower position or other positions specified by the commission for at least two years immediately before the date the promotional examination is held. A police officer 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 police department.

(c) If a person is recalled on active military duty for not more than 60 months, the two-year service requirements prescribed by Subsections (a) and (b) do not apply and the person is entitled to have time spent on active military duty considered as duty in the respective fire or police department.

§ 143.029. Promotional Examination Notice

(a) Before the 90th day before the date a promotional examination is held, the commission shall post a notice that lists the sources from which the examination questions will be taken.

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

(c) The notice required by Subsection (b) may 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.

(d) In addition to the notice prescribed by this section, a municipality with a population of 1.5 million or more must post the notice prescribed by Section 143.107.

§ 143.030. Eligibility for Fire Department Promotional Examination

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) Each promotional examination is open to each fire fighter 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.

(c) 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 fire fighter 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.

(d) If there are not enough fire fighters in the next lower position with two years' service in that position to provide an adequate number of persons to take the examination, the commission may open the examination to persons in that position with less than two years' service. If there is still an insufficient number, the commission may 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.

(e) If a fire fighter had previously terminated the fire fighter's employment with the department

and is subsequently reemployed by the same department, the fire fighter must again meet the two-year service requirement for eligibility to take a promotional examination. In determining if a fire fighter has met the two-year service requirement, a fire department may not consider service in another fire department.

(f) This section does not prohibit lateral crossover between classes.

§ 143.031. Eligibility for Police Department Promotional Examination

(a) Each promotional examination is open to each police officer who for at least two years immediately before the examination date has continuously held a position in the classification that is immediately below, in salary, the classification for which the examination is to be held.

(b) 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 police officer who has continuously held for at least two years immediately before the examination date a position at the next lower pay grade, if it exists, in the classification for which the examination is to be held.

(c) If there are not sufficient police officers in the next lower position with two years' service in that position to provide an adequate number of persons to take the examination, the commission shall open the examination to persons in that position with less than two years' service. If there is still an insufficient number, the commission may open the examination to persons in the second lower position, in salary, to the position for which the examination is to be held.

§ 143.032. Promotional Examination Procedure

(a) The commission shall adopt rules governing promotions and shall hold promotional examinations to provide eligibility lists for each classification in the fire and police departments. Unless a different procedure is adopted under an alternate promotional system as provided by Section 143.035, the examinations shall be held substantially as prescribed by this section.

(b) (1) Each eligible promotional candidate shall be given an identical examination in the presence of the other eligible promotional candidates, except that an eligible promotional candidate who is serving on active military duty outside of this state or in a location that is not within reasonable geographic proximity to the location where the examination is being administered is entitled to take the examination outside of the presence of and at a different time than the other candidates and may be allowed to take an examination that is not identical to the examination administered to the other candidates.

(2) The commission may adopt rules under Subsection (a) providing for the efficient administration of promotional examinations to eligible promotional candidates who are members of the armed forces serving on active military duty. In adopting the rules, the commission shall ensure that the administration of the examination will not result in unnecessary interference with any ongoing military effort. The rules shall require that:

(A) at the discretion of the administering entity, an examination that is not identical to the examination administered to other eligible promotional candidates may be administered to an eligible promotional candidate who is serving on active military duty; and

(B) if a candidate serving on active military duty takes a promotional examination outside the presence of other candidates and passes the examination, the candidate's name shall be included in the eligibility list of names of promotional candidates who took and passed the examination nearest in time to the time at which the candidate on active military duty took the examination.

(c) The examination must be entirely in writing and may not in any part consist of an oral interview.

(d) The examination questions must test the knowledge of the eligible promotional candidates

about information and facts and must be based on:

- (1) the duties of the position for which the examination is held;
- (2) material that is of reasonably current publication and that has been made reasonably available to each member of the fire or police department involved in the examination; and
- (3) any study course given by the departmental schools of instruction.

(e) The examination questions must be taken from the sources posted as prescribed by Section 143.029(a). Fire fighters or police officers may suggest source materials for the examinations.

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

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

(h) A person commits an offense if the person knowingly or intentionally:

- (1) reveals a part of a promotional examination to an unauthorized person; or
- (2) receives from an authorized or unauthorized person a part of a promotional examination for unfair personal gain or advantage.

(i) 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 the confinement.

§ 143.033. Promotional Examination Grades

(a) The grading of each promotional examination shall begin when one eligible promotional candidate completes the examination. As the eligible promotional candidates finish the examination, the examinations shall be graded at the examination location and in the presence of any candidate who wants to remain during the grading.

(b) Each police officer is entitled to receive one point for each year of seniority as a classified police officer in that department, with a maximum of 10 points. Each fire fighter is entitled to receive one point for each year of seniority in that department, with a maximum of 10 points.

(c) Unless a different procedure is adopted under an alternate promotional system as provided by Section 143.035, the grade that must be placed on the eligibility list for each police officer or fire fighter shall be computed by adding the applicant's points for seniority to the applicant's grade on the written examination, but for a fire fighter applicant only if the applicant scores a passing grade on the written examination. 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. The passing grade in a municipality with a population of 1.5 million or more is prescribed by Section 143.108. In a municipality with a population of less than 1.5 million, all police officer applicants who receive a grade of at least 70 points shall be determined to have passed the examination and all fire fighter applicants who receive a grade on the written examination of at least 70 points shall be determined to have passed the examination. If a tie score occurs, the commission shall determine a method to break the tie.

(d) Within 24 hours after a promotional examination is held, the commission shall post the individual raw test scores on a bulletin board located in the main lobby of the city hall.

§ 143.034. Review and Appeal of Promotional Examination

(a) On request, each eligible promotional candidate from the fire or police department is entitled to examine the person's promotional examination and answers, the examination grading, and the source material for the examination. If dissatisfied, the candidate may appeal, within five business days, to the commission for review in accordance with this chapter. In computing this period, a

Saturday, Sunday, or legal holiday is not considered a business day.

(b) The eligible promotional candidate may not remove the examination or copy a question used in the examination.

§ 143.035. Alternate Promotional System in Police Department

(a) This section does not apply to a municipality that has adopted The Fire and Police Employee Relations Act (Article 5154cB1, Vernon's Texas Civil Statutes).

(b) On the recommendation of the head of the police department and a majority vote of the sworn police officers in the department, the commission may adopt an alternate promotional system to select persons to occupy nonentry level positions other than positions that are filled by appointment by the department head. The promotional system must comply with the requirements prescribed by this section.

(c) The commission shall order the director to conduct an election and to submit the revised promotional system either to all sworn police officers within the rank immediately below the classification for which the promotional examination is to be administered or to all sworn police officers in the department.

(d) The director shall hold the election on or after the 30th day after the date notice of the election is posted at the department. The election shall be conducted throughout each regular work shift at an accessible location within the department during a 24-hour period.

(e) The ballot shall contain the specific amendment to the promotional procedure. Each sworn police officer shall be given the opportunity to vote by secret ballot "for" or "against" the amendment.

(f) The revised promotional system must be approved by a majority vote of the sworn police officers voting. A defeated promotional system amendment may not be placed on a ballot for a vote by the sworn police officers for at least 12 months after the date the prior election was held, but this provision does not apply if the head of the department recommends a different proposal to the commission.

(g) The commission shall canvass the votes within 30 days after the date the election is held. An appeal alleging election irregularity must be filed with the commission within five working days after the date the election closes. If approved by the sworn police officers, the promotional system amendment becomes effective after all election disputes have been ruled on and the election votes have been canvassed by the commission.

(h) At any time after an alternate promotional system has been adopted under this section and has been in effect for at least 180 days, the department head may petition the commission to terminate the alternate system, and the commission shall terminate the alternate system.

(i) At any time after an alternate promotional system has been adopted under this section and has been in effect for at least 180 days, a petition signed by at least 35 percent of the sworn police officers may be submitted to the commission asking that the alternate promotional system be reconsidered. If a petition is submitted, the commission shall, within 60 days after the date the petition is filed, hold an election as prescribed by this section. If a majority of those voting vote to terminate, the commission shall terminate the alternate promotional system.

(j) If the alternate system is terminated, an additional list may not be created under the alternate system.

(k) A promotional list may not be created if an election under this section is pending. An existing eligibility list, whether created under the system prescribed by this chapter or created under an alternate system adopted under this section, may not be terminated before or extended beyond its expiration date. A person promoted under an alternate system has the same rights and the same status as a person promoted under this chapter even if the alternate system is later terminated.

§ 143.036. Procedure for Making Promotional Appointments

(a) When a vacancy occurs in a nonentry position that is not appointed by the department head as provided by Sections 143.014 and 143.102, the vacancy shall be filled as prescribed by this section and Section 143.108, as applicable. A vacancy in a fire fighter position described by this subsection occurs on the date the position is vacated by:

- (1) resignation;
- (2) retirement;
- (3) death;
- (4) promotion; or
- (5) issuance of an indefinite suspension in accordance with Section 143.052(b).

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

(c) In a municipality with a population of less than 1.5 million, the commission shall submit names from an existing eligibility list to the department head until the vacancy is filled or the list is exhausted.

(d) If an eligibility list does not exist on the date a vacancy occurs or a new position is created, the commission shall 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) If an eligibility list exists on the date a vacancy occurs, the department head shall fill the vacancy by permanent appointment from the eligibility list furnished by the commission within 60 days after the date the vacancy occurs. If an eligibility list does not exist, the department head shall fill the vacancy by permanent appointment from an eligibility list that the commission shall provide within 90 days after the date the vacancy occurs. This subsection does not apply in a municipality with a population of 1.5 million or more.

(f) Unless the department head has a valid reason for not appointing the person, the department head shall appoint the eligible promotional candidate having the highest grade on the eligibility list. If the department head has a valid reason for not appointing the eligible promotional candidate having the highest grade, the department head shall personally discuss the reason with the person being bypassed before appointing another person. The department head shall also file the reason in writing with the commission and shall provide the person with a copy of the written notice. 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 or, on the written request of the person being bypassed, by an independent third party hearing examiner under Section 143.057.

(g) If a person is bypassed, the person's name is returned to its place on the eligibility list and shall be resubmitted to the department head if a vacancy occurs. If the department head refuses three times to appoint a person, files the reasons for the refusals in writing with the commission, and the commission does not set aside the refusals, the person's name shall be removed from the eligibility list.

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

§ 143.037. Record of Certification and Appointment

(a) When a person is certified and appointed to a position in the fire or police department, the director shall forward the appointed person's record to the proper department head. The director shall also forward a copy of the record to the chief executive and shall retain a copy in the civil service files.

(b) The record must contain:

- (1) the date notice of examination for the position was posted;
- (2) the date on which the appointed person took the examination;
- (3) the name of each person who conducted the examination;
- (4) the relative position of the appointed person on the eligibility list;
- (5) the date the appointed person took the physical examination, the name of the examining physician, and whether the person was accepted or rejected;
- (6) the date the request to fill the vacancy was made;
- (7) the date the appointed person was notified to report for duty; and
- (8) the date the appointed person's pay is to start.

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

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

§ 143.038. Temporary Duties in Higher Classification

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) The department head may designate a person from the next lower classification to temporarily fill a position in a higher classification. The designated person 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) The temporary performance of the duties of a higher position by a person who has not been promoted as prescribed by this chapter may not be construed as a promotion.

SUBCHAPTER C. COMPENSATION

§ 143.041. Salary

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) Except as provided by Section 143.038, all fire fighters or police officers in the same classification are entitled to the same base salary.

(c) In addition to the base salary, each fire fighter or police officer is entitled to each of the following types of pay, if applicable:

- (1) longevity or seniority pay;
- (2) educational incentive pay as authorized by Section 143.044;
- (3) assignment pay as authorized by Sections 143.042 and 143.043;
- (4) certification pay as authorized by Section 143.044;
- (5) shift differential pay as authorized by Section 143.047; and
- (6) fitness incentive pay as authorized by Section 143.044.

§ 143.042. Assignment Pay

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) The governing body of a municipality may authorize assignment pay for fire fighters and police officers who perform specialized functions in their respective departments.

(c) The assignment pay is in an amount and is payable under conditions set by ordinance and is

in addition to the regular pay received by members of the fire or police department.

(d) If the ordinance applies equally to each person who meets the criteria established by the ordinance, the ordinance may provide for payment to each fire fighter and police officer who meets training or education criteria for an assignment or the ordinance may set criteria that provide for payment only to a fire fighter or police officer in a special assignment.

(e) The head of the fire or police department is not eligible for the assignment pay authorized by this section.

§ 143.043. Field Training Officer Assignment Pay

(a) In this section, "field training officer" means a member of the police department who is assigned to and performs the duties and responsibilities of the field training officers program.

(b) The governing body of a municipality may authorize assignment pay for field training officers. The assignment pay is in an amount and is payable under conditions set by ordinance and is in addition to the regular pay received by members of the police department.

(c) The department head is not eligible for the assignment pay authorized by this section.

§ 143.044. Certification, Educational Incentive, and Fitness Incentive Pay

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) If each fire fighter or police officer in a municipality is afforded an opportunity to qualify for certification, the municipality's governing body may authorize certification pay to those fire fighters who meet the requirements for certification set by the Commission on Fire Protection Personnel Standards and Education or for those police officers who meet the requirements for certification set by the Commission on Law Enforcement Officer Standards and Education.

(c) If the criteria for educational incentive pay are clearly established, are in writing, and are applied equally to each fire fighter or police officer in a municipality who meets the criteria, the municipality's governing body may authorize educational incentive pay for each fire fighter or police officer who has successfully completed courses at an accredited college or university.

(d) If the criteria for fitness incentive pay are clearly established, are in writing, and are applied equally to each fire fighter or police officer in a municipality who meets the criteria, the municipality's governing body may authorize fitness incentive pay for each fire fighter or police officer who successfully meets the criteria.

(e) The certification pay, educational incentive pay, and fitness incentive pay are in addition to a fire fighter's or police officer's regular pay.

§ 143.045. Accumulation and Payment of Sick Leave

(a) A permanent or temporary fire fighter or police officer 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, so as to total 15 working days to a person's credit each 12 months.

(b) A fire fighter or police officer may accumulate sick leave without limit and may use the leave if unable to work because of a bona fide illness. If an ill fire fighter or police officer exhausts the sick leave and can conclusively prove that the illness was incurred in the performance of duties, an extension of sick leave shall be granted.

(c) Except as otherwise provided by Section 143.116, a fire fighter or police officer 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. If a fire fighter or police officer has accumulated more than 90 working days of sick leave, the person's employer may 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. The lump-sum payment is computed by compensating the fire fighter or police officer for the accumulated time at the highest permanent pay classification for which the person was eligible during the last six months of employment. The fire fighter or police officer 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) To facilitate the settlement of the accounts of deceased fire fighters and police officers, all unpaid compensation, including all accumulated sick leave, due at the time of death to an active fire fighter or police officer who dies as a result of a line-of-duty injury or illness, shall be paid to the persons in the first applicable category of the following prioritized list:

(1) to the beneficiary or beneficiaries the fire fighter or police officer designated in writing to receive the compensation and filed with the commission before the person's death;

(2) to the fire fighter's or police officer's widow or widower;

(3) to the fire fighter's or police officer's child or children and to the descendants of a deceased child, by representation;

(4) to the fire fighter's or police officer's parents or to their survivors; or

(5) to the properly appointed legal representative of the fire fighter's or police officer's estate, or in the absence of a representative, to the person determined to be entitled to the payment under the state law of descent and distribution.

(e) Payment of compensation to a person in accordance with Subsection (d) is a bar to recovery by another person.

§ 143.046. Vacations

(a) Each fire fighter or police officer is entitled to earn a minimum of 15 working days' vacation leave with pay in each year.

(b) In computing the length of time a fire fighter or police officer may be absent from work on vacation leave, only those calendar days during which the person would be required to work if not on vacation may be counted as vacation days.

(c) Unless approved by the municipality's governing body, a fire fighter or police officer may not accumulate vacation leave from year to year.

§ 143.047. Shift Differential Pay

(a) The governing body of a municipality may authorize shift differential pay for fire fighters and police officers who work a shift in which more than 50 percent of the time worked is after 6 p.m. and before 6 a.m.

(b) The shift differential pay is in an amount and is payable under conditions set by ordinance and is in addition to the regular pay received by members of the fire or police department.

SUBCHAPTER D. DISCIPLINARY ACTIONS

§ 143.051. Cause for Removal or Suspension

A commission rule prescribing cause for removal or suspension of a fire fighter or police officer is not valid unless it involves one or more of the following grounds:

(1) conviction of a felony or other crime involving moral turpitude;

(2) violations of a municipal charter provision;

(3) acts of incompetency;

(4) neglect of duty;

(5) discourtesy to the public or to a fellow employee while the fire fighter or police officer is in the

line of duty;

- (6) acts showing lack of good moral character;
- (7) drinking intoxicants while on duty or intoxication while off duty;
- (8) conduct prejudicial to good order;
- (9) refusal or neglect to pay just debts;
- (10) absence without leave;
- (11) shirking duty or cowardice at fires, if applicable; or
- (12) violation of an applicable fire or police department rule or special order.

§ 143.052. Disciplinary Suspensions

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) The head of the fire or police department may suspend a fire fighter or police officer under the department head's supervision or jurisdiction for the violation of a civil service rule. The suspension may be for a reasonable period not to exceed 15 calendar days or for an indefinite period. An indefinite suspension is equivalent to dismissal from the department.

(c) If the department head suspends a fire fighter or police officer, the department head shall, within 120 hours after the hour of suspension, file a written statement with the commission giving the reasons for the suspension. The department head shall immediately deliver a copy of the statement in person to the suspended fire fighter or police officer.

(d) The copy of the written statement must inform the suspended fire fighter or police officer 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.

(e) The written statement filed by the department head with the commission must point out each civil service rule alleged to have been violated by the suspended fire fighter or police officer and must describe the alleged acts of the person that the department head contends are in violation of the civil service rules. It is not sufficient for the department head merely to refer to the provisions of the rules alleged to have been violated.

(f) If the department head does not specifically point out in the written statement the act or acts of the fire fighter or police officer that allegedly violated the civil service rules, the commission shall promptly reinstate the person.

(g) If offered by the department head, the fire fighter or police officer may 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. The fire fighter or police officer must accept the offer within five working days after the date the offer is made. If the person refuses the offer and wants to appeal to the commission, the person must file a written appeal with the commission within 15 days after the date the person receives the copy of the written statement of suspension.

(h) In the original written statement and charges and in any hearing conducted under this chapter, the department head may not complain of an act that occurred earlier than the 180th day preceding the date the department head suspends the fire fighter or police officer. If the act is allegedly related to criminal activity including the violation of a federal, state, or local law for which the fire fighter or police officer is subject to a criminal penalty, the department head may not complain of an act that is discovered earlier than the 180th day preceding the date the department head suspends the fire fighter or police officer. The department head must allege that the act complained of is related to criminal activity.

§ 143.053. Appeal of Disciplinary Suspension

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) If a suspended fire fighter or police officer appeals the suspension to the commission, the commission shall hold a hearing and render a decision in writing within 30 days after the date it

receives notice of appeal. The suspended person and the commission may agree to postpone the hearing for a definite period.

(c) 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.

(d) The commission may deliberate the decision in closed session but may not consider evidence that was not presented at the hearing. The commission shall vote in open session.

(e) In its decision, the commission shall state whether the suspended fire fighter or police officer is:

(1) permanently dismissed from the fire or police department;

(2) temporarily suspended from the department; or

(3) restored to the person's former position or status in the department's classified service.

(f) If the commission finds that the period of disciplinary suspension should be reduced, the commission may order a reduction in the period of suspension. If the suspended fire fighter or police officer is restored to the position or class of service from which the person was suspended, the fire fighter or police officer is entitled to:

(1) full compensation for the actual time lost as a result of the suspension at the rate of pay provided for the position or class of service from which the person was suspended; and

(2) restoration of or credit for any other benefits lost as a result of the suspension, including sick leave, vacation leave, and service credit in a retirement system. Standard payroll deductions, if any, for retirement and other benefits restored shall be made from the compensation paid, and the municipality shall make its standard corresponding contributions, if any, to the retirement system or other applicable benefit systems.

(g) The commission may suspend or dismiss a fire fighter or police officer only for violation of civil service rules and only after a finding by the commission of the truth of specific charges against the fire fighter or police officer.

§ 143.054. Demotions

(a) If the head of the fire or police department wants a fire fighter or police officer under his supervision or jurisdiction to be involuntarily demoted, the department head may recommend in writing to the commission that the commission demote the fire fighter or police officer.

(b) The department head must include in the recommendation for demotion the reasons the department head recommends the demotion and a request that the commission order the demotion. The department head must immediately furnish a copy of the recommendation in person to the affected fire fighter or police officer.

(c) The commission may refuse to grant the request for demotion. If the commission believes that probable cause exists for ordering the demotion, the commission shall give the fire fighter or police officer written notice to appear before the commission for a public hearing at a time and place specified in the notice. The commission shall give the notice before the 10th day before the date the hearing will be held.

(d) The fire fighter or police officer is entitled to a full and complete public hearing, and the commission may not demote a fire fighter or police officer without that public hearing.

(e) A voluntary demotion in which the fire fighter or police officer has accepted the terms of the demotion in writing is not subject to this section.

§ 143.055. Uncompensated Duty of Police Officers

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) In this section, "uncompensated duty" means days of police work without pay that are in addition to regular or normal work days.

(c) The head of the police department may assign a police officer under his jurisdiction or

supervision to uncompensated duty. The department head may not impose uncompensated duty unless the police officer agrees to accept the duty. If the police officer agrees to accept uncompensated duty, the department head shall give the person a written statement that specifies the date or dates on which the person will perform uncompensated duty.

(d) Uncompensated duty may be in place of or in combination with a period of disciplinary suspension without pay. If uncompensated duty is combined with a disciplinary suspension, the total number of uncompensated days may not exceed 15.

(e) A police officer may not earn or accrue any wage, salary, or benefit arising from length of service while the person is suspended or performing uncompensated duty. The days on which a police officer performs assigned uncompensated duty may not be taken into consideration in determining eligibility for a promotional examination. A disciplinary suspension does not constitute a break in a continuous position or in service in the department in determining eligibility for a promotional examination.

(f) Except as provided by this section, a police officer who performs assigned uncompensated duty retains all rights and privileges of the person's position in the police department and of the person's employment by the municipality.

§ 143.056. Procedures After Felony Indictment or Misdemeanor Complaint

(a) If a fire fighter or police officer is indicted for a felony or officially charged with the commission of a Class A or B misdemeanor, the department head may temporarily suspend the person with or without pay for a period not to exceed 30 days after the date of final disposition of the specified felony indictment or misdemeanor complaint.

(b) The department head shall notify the suspended fire fighter or police officer in writing that the person is being temporarily suspended for a specific period with or without pay and that the temporary suspension is not intended to reflect an opinion on the merits of the indictment or complaint.

(c) If the action 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, the department head may, within 30 days after the date of final disposition of the indictment or complaint, bring a charge against the fire fighter or police officer for a violation of civil service rules.

(d) A fire fighter or police officer 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 may delay the civil service hearing for not more than 30 days after the date of the final disposition of the indictment or complaint.

(e) If the department head temporarily suspends a fire fighter or police officer under this section and the fire fighter or police officer is not found guilty of the indictment or complaint in a court of competent jurisdiction, the fire fighter or police officer may appeal to the commission or to a hearing examiner for recovery of back pay. The commission or hearing examiner may award all or part of the back pay or reject the appeal.

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

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

(h) The department head may order an indefinite suspension based on an act classified as a felony or a Class A or B misdemeanor after the 180Bday period following the date of the discovery of the act by the department if the department head considers delay to be necessary to protect a criminal investigation of the person's conduct. If the department head intends to order an indefinite suspension after the 180Bday period, the department head must 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.

§ 143.057. Hearing Examiners

(a) In addition to the other notice requirements prescribed by this chapter, the written notice for a promotional bypass or the letter of disciplinary action, as applicable, issued to a fire fighter or police officer must state that in an appeal of an indefinite suspension, a suspension, a promotional bypass, or a recommended demotion, the appealing fire fighter or police officer may elect to appeal to an independent third party hearing examiner instead of to the commission. The letter must also state that if the fire fighter or police officer elects to appeal to a hearing examiner, the person waives all rights to appeal to a district court except as provided by Subsection (j).

(b) To exercise the choice of appealing to a hearing examiner, the appealing fire fighter or police officer must 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) The hearing examiner's decision is final and binding on all parties. If the fire fighter or police officer 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) If the appealing fire fighter or police officer chooses to appeal to a hearing examiner, the fire fighter or police officer and the department head, or their designees, shall first attempt to agree on the selection of an impartial hearing examiner. If the parties do not agree on the selection of a hearing examiner on or within 10 days after the date the appeal is filed, the director shall 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. The fire fighter or police officer and the department head, or their designees, may agree on one of the seven neutral arbitrators on the list. If they do not agree within five working days after the date they received the list, each party or the party's designee shall alternate striking a name from the list and the name remaining is the hearing examiner. The parties or their designees shall agree on a date for the hearing.

(e) The appeal hearing shall begin as soon as the hearing examiner can be scheduled. If the hearing examiner cannot begin the hearing within 45 calendar days after the date of selection, the fire fighter or police officer may, 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) 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) In a hearing conducted under this section, the parties may agree to an expedited hearing procedure. Unless otherwise agreed by the parties, in an expedited procedure the hearing examiner shall render a decision on the appeal within 10 days after the date the hearing ended.

(h) In an appeal that does not involve an expedited hearing procedure, the hearing examiner shall 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. 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) The hearing examiner's fees and expenses are shared equally by the appealing fire fighter or police officer and by the department. The costs of a witness are paid by the party who calls the witness.

(j) A district court may hear an appeal of a hearing examiner's award only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction or that the order was procured by fraud, collusion, or other unlawful means. An appeal must be brought in the district

court having jurisdiction in the municipality in which the fire or police department is located.

SUBCHAPTER E. LEAVES

§ 143.071. Leaves of Absence; Restriction Prohibited

(a) If a sufficient number of fire fighters or police officers are available to carry out the normal functions of the fire or police department, a fire fighter or police officer may not be refused a reasonable leave of absence without pay to attend a fire or police school, convention, or meeting if the purpose of the school, convention, or meeting is to secure a more efficient department and better working conditions for department personnel.

(b) A rule that affects a fire fighter's or police officer's constitutional right to appear before or to petition the legislature may not be adopted.

§ 143.072. Military Leave of Absence

(a) On written application of a fire fighter or police officer, the commission shall grant the person a military leave of absence without pay, subject to Section 143.075, to enable the person to enter a branch of the United States military service. The leave of absence may not exceed the period of compulsory military service or the basic minimum enlistment period for the branch of service the fire fighter or police officer enters.

(b) The commission shall grant to a fire fighter or police officer a leave of absence for initial training or annual duty in the military reserves or the national guard.

(c) While a fire fighter or police officer who received a military leave of absence serves in the military, the commission shall fill the person's position in the department in accordance with this chapter. The fire fighter or police officer 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) On termination of active military service, a fire fighter or police officer 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:

(1) receives an honorable discharge;

(2) remains physically and mentally fit to discharge the duties of that position; and

(3) makes an application for reinstatement within 90 days after the date the person is discharged from military service.

(e) On reinstatement, the fire fighter or police officer shall receive full seniority credit for the time spent in the military service.

(f) If the reinstatement of a fire fighter or police officer 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. 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.

(g) If a fire fighter or police officer employed by the municipality is called to active military duty for any period, the employing municipality must continue to maintain any health, dental, or life insurance coverage and any health or dental benefits coverage that the fire fighter or police officer received through the municipality on the date the fire fighter or police officer was called to active military duty until the municipality receives written instructions from the fire fighter or police officer to change or discontinue the coverage.

(h) In addition to other procedures prescribed by this section, a fire fighter or police officer may, without restriction as to the amount of time, voluntarily substitute for a fire fighter or police officer

described by Sections 143.075(b)(1) and (2) who has been called to active federal military duty for a period expected to last 12 months or longer. A fire fighter or police officer who voluntarily substitutes under this subsection must be qualified to perform the duties of the absent fire fighter or police officer.

§ 143.073. Line of Duty Illness or Injury Leave of Absence

(a) A municipality shall provide to a fire fighter or police officer a leave of absence for an illness or injury related to the person's line of duty. The leave is with full pay for a period commensurate with the nature of the line of duty illness or injury. If necessary, the leave shall continue for at least one year.

(b) At the end of the one-year period, the municipality's governing body may extend the line of duty illness or injury leave at full or reduced pay. If the fire fighter's or police officer's leave is not extended or the person's salary is reduced below 60 percent of the person's regular monthly salary, and the person is a member of a pension fund, the person may retire on pension until able to return to duty.

(c) If pension benefits are not available to a fire fighter or police officer 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, the fire fighter or police officer may use accumulated sick leave, vacation time, and other accrued benefits before the person is placed on temporary leave.

(d) If a fire fighter or police officer is temporarily disabled by an injury or illness that is not related to the person's line of duty, the person may use all sick leave, vacation time, and other accumulated time before the person is placed on temporary leave.

(e) After recovery from a temporary disability, a fire fighter or police officer shall be reinstated at the same rank and with the same seniority the person had before going on temporary leave. Another fire fighter or police officer may voluntarily do the work of an injured fire fighter or police officer until the person returns to duty.

§ 143.074. Reappointment After Recovery From Disability

With the commission's approval and if otherwise qualified, a fire fighter or police officer who has been certified by a physician selected by a fire fighters' or police officers' relief or retirement 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.

§ 143.075. Military Leave Time Accounts

(a) A municipality shall maintain military leave time accounts for the fire and police departments and must maintain a separate military leave time account for each department.

(b) A military leave time account shall benefit a fire fighter or police officer who:

- (1) is a member of the Texas National Guard or the armed forces reserves of the United States;
- (2) was called to active federal military duty while serving as a fire fighter or police officer for the municipality;
- (3) has served on active duty for a period of 12 continuous months or longer; and
- (4) has exhausted the balance of the person's vacation, holiday, and compensatory leave time accumulations.

(c) A fire fighter or police officer may donate any amount of accumulated vacation, holiday, sick, or compensatory leave time to the military leave time account in that fire fighter's or police officer's

department to help provide salary continuation for fire fighters or police officers who qualify as eligible beneficiaries of the account under Subsection (b). A fire fighter or police officer who wishes to donate time to an account under this section must authorize the donation in writing on a form provided by the fire or police department and approved by the municipality.

(d) A municipality shall equally distribute the leave time donated to a military leave time account among all fire fighters or police officers who are eligible beneficiaries of that account. The municipality shall credit and debit the applicable military leave time account on an hourly basis regardless of the cash value of the time donated or used.

SUBCHAPTER F. MISCELLANEOUS PROVISIONS

§ 143.081. Determination of Physical and Mental Fitness

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) If a question arises as to whether a fire fighter or police officer is sufficiently physically or mentally fit to continue the person's duties, the fire fighter or police officer shall submit to the commission a report from the person's personal physician, psychiatrist, or psychologist, as appropriate.

(c) If the commission, the department head, or the fire fighter or police officer questions the report, the commission shall appoint a physician, psychiatrist, or psychologist, as appropriate, to examine the fire fighter or police officer and to submit a report to the commission, the department head, and the person.

(d) If the report of the appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with the report of the fire fighter's or police officer's personal physician, psychiatrist, or psychologist, as appropriate, the commission shall appoint a three-member board composed of a physician, a psychiatrist, and a psychologist, or any combination, as appropriate, to examine the fire fighter or police officer. The board's findings as to the person's fitness for duty shall determine the issue.

(e) The fire fighter or police officer shall pay the cost of the services of the person's personal physician, psychiatrist, or psychologist, as appropriate. The municipality shall pay all other costs.

§ 143.082. Efficiency Reports

(a) The commission may develop proper procedures and rules for semiannual efficiency reports and grades for each fire fighter or police officer.

(b) If the commission collects efficiency reports on fire fighters or police officers, the commission shall provide each person with a copy of that person's report.

(c) Within 10 calendar days after the date a fire fighter or police officer receives the copy of the person's efficiency report, the person may make a statement in writing concerning the efficiency report. The statement shall be placed in the person's personnel file with the efficiency report.

§ 143.083. Emergency Appointment of Temporary Fire Fighters and Police Officers

(a) If a municipality is unable to recruit qualified fire fighters or police officers because of the maximum age limit prescribed by Section 143.023 and the municipality's governing body finds that this inability creates an emergency, the commission shall recommend to the governing body additional rules governing the temporary employment of persons who are 36 years of age or older.

(b) A person employed under this section:

(1) is designated as a temporary employee;

(2) is not eligible for pension benefits;

(3) is not eligible for appointment or promotion if a permanent applicant or employee is available;

(4) is not eligible to become a full-fledged civil service employee; and
(5) must be dismissed before a permanent civil service employee may be dismissed under Section 143.085.

§ 143.084. Civil Service Status and Pension Benefits for Certain Fire Fighters and Police Officers

(a) Each fire fighter or police officer who, since December 31, 1969, has been continuously employed as a temporary employee under the provision codified as Section 143.083 has the full status of a civil service employee with all the rights and privileges granted by Section 143.005.

(b) A fire fighter or police officer covered by Subsection (a) is eligible to participate in earned pension benefits. The person may buy back service credits in the pension fund in which the permanent fire fighters or police officers in the department have participated since that person's employment. The credits may be bought at a rate determined by the actuary of the affected pension fund.

§ 143.085. Force Reduction and Reinstatement List

(a) If a municipality's governing body adopts an ordinance that vacates or abolishes a fire or police department position, the fire fighter or police officer who holds that position shall be demoted to the position immediately below the vacated or abolished position. If one or more positions of equal rank are vacated or abolished, the fire fighters or police officers who have the least seniority in a position shall be demoted to the position immediately below the vacated or abolished position. If a fire fighter or police officer is demoted under this subsection without charges being filed against the person for violation of civil service rules, the fire fighter or police officer shall be placed on a position reinstatement list in order of seniority. If the vacated or abolished position is filled or re-created within one year after the date it was vacated or abolished, the position must be filled from the reinstatement list. Appointments from the reinstatement list shall be made in order of seniority. A person who is not on the list may not be appointed to the position during the one-year period until the reinstatement list is exhausted.

(b) If a position in the lowest classification is abolished or vacated and a fire fighter or police officer must be dismissed from the department, the fire fighter or police officer with the least seniority shall be dismissed. If a fire fighter or police officer is dismissed under this subsection without charges being filed against the person for violation of civil service rules, the fire fighter or police officer shall be placed on a reinstatement list in order of seniority. Appointments from the reinstatement list shall be made in order of seniority. Until the reinstatement list is exhausted, a person may not be appointed from an eligibility list. When a person has been on a reinstatement list for three years, the person shall be dropped from the list but shall be restored to the list at the request of the commission.

§ 143.086. Political Activities

(a) While in uniform or on active duty, a fire fighter or police officer may not take an active part in another person's political campaign for an elective position of the municipality.

(b) For the purposes of this section, a person takes an active part in a political campaign if the person:

- (1) makes a political speech;
- (2) distributes a card or other political literature;
- (3) writes a letter;
- (4) signs a petition;
- (5) actively and openly solicits votes; or
- (6) makes public derogatory remarks about a candidate for an elective position of the

municipality.

(c) A fire fighter or police officer may not be required to contribute to a political fund or to render a political service to a person or party. A fire fighter or police officer may not be removed, reduced in classification or salary, or otherwise prejudiced for refusing to contribute to a political fund or to render a political service.

(d) A municipal official who attempts to violate Subsection (c) violates this chapter.

(e) Except as expressly provided by this section, the commission or the municipality's governing body may not restrict a fire fighter's or police officer's right to engage in a political activity.

§ 143.087. Strike Prohibition

(a) A fire fighter or police officer may not engage in a strike against the governmental agency that employs the fire fighter or police officer.

(b) In addition to the penalty prescribed by Section 143.016, if a fire fighter or police officer is convicted of an offense for violating this section, the person shall be automatically released and discharged from the fire or police department. After the person is discharged from the department, the person may not receive any pay or compensation from public funds used to support the fire or police department.

§ 143.088. Unlawful Resignation or Retirement

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) 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.

(c) 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.

(d) An offense under this section is a Class A misdemeanor.

§ 143.089. Personnel File

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum, or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to sustain the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by Subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

(d) If a negative letter, memorandum, document, or other notation of negative impact is included in a fire fighter's or police officer's personnel file, the director or the director's designee shall, within 30 days after the date of the inclusion, notify the affected fire fighter or police officer. The fire fighter

or police officer may, 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) The fire fighter or police officer is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file. The municipality may charge the fire fighter or police officer a reasonable fee not to exceed actual cost for any copies provided under this subsection.

(f) The director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

(g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

SUBCHAPTER I. FIRE FIGHTER AND POLICE OFFICER EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES

§ 143.301. Municipalities Covered by Subchapter

This subchapter applies only to a municipality with a population of 460,000 or more that operates under a city manager form of government. This subchapter does not apply to a municipality:

- (1) that has adopted Chapter 174 (The Fire and Police Employee Relations Act); or
- (2) to which Subchapter H applies.

§ 143.3015. Limitation on Municipalities Covered By Subchapter: Voter Approval

(a) The governing body of a municipality with a population less than 560,000 that has not recognized an association as the sole and exclusive bargaining agent as provided by Section 143.304 before September 1, 2001, must receive voter approval under this section before operating under the other provisions of this subchapter.

(b) The governing body shall call an election if:

- (1) a majority of the members of the governing body vote to hold the election; or
- (2) the voters submit a petition requesting the election as required by this section.

(c) A petition for election must:

- (1) be signed by a number of qualified voters of the municipality equal to at least 10 percent of the number of voters who voted in the most recent municipal election for mayor; and
- (2) comply with Chapter 277, Election Code.

(d) Not later than the 40th working day after the date a petition is presented to the governing body, the municipal secretary shall certify to the governing body the number and percentage of registered voters signing the petition.

(e) Upon receiving a petition in compliance with this subchapter, the governing body shall order an election submitting to the voters the question of whether this subchapter should be adopted for firefighters, police officers, or both. The election must be held on the first authorized uniform election date prescribed by Chapter 41, Election Code, that occurs after the petition is filed and that allows sufficient time to comply with other requirements of law.

(f) The ballot for an election called under this section shall be printed to permit voting for or against the proposition: "Authorizing (name of the governing body of the municipality) to recognize an employee association as a sole and exclusive bargaining agent for the municipal (insert firefighters, police officers, or both, as applicable,) and authorizing the (name of the governing body

of the municipality) to make agreements with the employee association as provided by state law."

(g) An election authorized by this section shall be held and the returns shall be prepared and canvassed in conformity with the Election Code.

(h) The municipality may operate under the other provisions of this subchapter only if a majority of the votes cast at the election favor the proposition.

§ 143.302. Definitions

In this subchapter:

(1) "Association" means an organization in which fire fighters or police officers participate and that exists for the purpose, in whole or in part, of dealing with one or more employers, whether public or private, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work affecting public employees.

(2) "Public employer" means any municipality or agency, board, commission, or political subdivision controlled by a municipality that is required to establish the wages, salaries, rates of pay, hours, working conditions, and other terms and conditions of employment of public employees. The term may include, under appropriate circumstances, a mayor, manager, administrator of a municipality, municipal governing body, director of personnel, or personnel board or one or more other officials, regardless of the name by which they are designated.

§ 143.303. General Provisions Relating to Agreements, Recognition, and Strikes

(a) A municipality may not be denied local control over wages, salaries, rates of pay, hours of work, other terms and conditions of employment, or other personnel issues on which the public employer and an association that is recognized as the sole and exclusive bargaining agent for all fire fighters or police officers in the municipality agree. A term or condition on which the public employer and the association do not agree is governed by the applicable statutes, local ordinances, and civil service rules. An agreement must be reduced to writing. This subchapter does not require the public employer and the association to meet and confer or reach an agreement on any issue.

(b) A public employer and an association recognized under this subchapter as a sole and exclusive bargaining agent may meet and confer only if the association does not advocate the illegal right to strike by public employees.

(c) A fire fighter or police officer of a municipality may not engage in a strike or organized work stoppage against this state or a political subdivision of this state. A fire fighter or police officer who participates in a strike forfeits all civil service rights, reemployment rights, and other rights, benefits, or privileges the fire fighter or police officer enjoys as a result of the person's employment or previous employment with the municipality. This subsection does not affect the right of a person to cease employment if the person is not acting in concert with other fire fighters or police officers.

§ 143.304. Recognition of Fire Fighters or Police Officers Association

(a) The public employer may recognize an association that submits a petition signed by a majority of the paid fire fighters or police officers in the municipality, excluding the head of the department and assistant department heads in the rank or classification immediately below that of the department head, as the sole and exclusive bargaining agent for all of the covered fire fighters or police officers unless recognition of the association is withdrawn by a majority of the covered fire fighters or police officers.

(b) A question of whether an association is the majority representative of the covered fire fighters or police officers shall be resolved by a fair election conducted according to procedures agreed on by the parties. If the parties are unable to agree on election procedures, either party may request the American Arbitration Association to conduct the election and to certify the results. Certification of the results of an election under this subsection resolves the question concerning representation.

The association shall pay the costs of the election, except that if two or more associations seeking recognition as the bargaining agent submit petitions signed by a majority of the covered fire fighters or police officers, the associations shall share equally the costs of the election.

(c) The public employer's manager or chief executive and the police chief or fire chief, as appropriate, shall designate a team to represent the public employer as its sole and exclusive bargaining agent for issues related to the fire department and a separate team to represent the public employer as its sole and exclusive bargaining agent for issues related to the police department.

§ 143.305. Open Records Required

An agreement made under this subchapter is a public record for purposes of Chapter 552, Government Code. The agreement and any document prepared and used by the municipality in connection with the agreement are available to the public under the open records law, Chapter 552, Government Code, only after the agreement is ratified by the municipality's governing body. This section does not affect the application of Subchapter C, Chapter 552, Government Code, to a document prepared and used by the municipality in connection with the agreement.

§ 143.306. Enforceability of Agreement

(a) A written agreement made under this subchapter between a public employer and an association is binding on the public employer, the association, and fire fighters or police officers covered by the agreement if:

(1) the municipality's governing body ratifies the agreement by a majority vote; and

(2) the applicable association ratifies the agreement by a majority vote of its members by secret ballot.

(b) An agreement ratified as described by Subsection (a) may establish a procedure by which the parties agree to resolve disputes related to a right, duty, or obligation provided by the agreement, including binding arbitration on interpretation of the agreement.

(c) The district court of the judicial district in which the municipality is located has full authority and jurisdiction on the application of either party aggrieved by an act or omission of the other party related to a right, duty, or obligation provided by a written agreement ratified as described by Subsection (a). The court may issue proper restraining orders, temporary and permanent injunctions, or any other writ, order, or process, including a contempt order, that is appropriate to enforce the agreement.

§ 143.307. Agreement Supersedes Conflicting Provisions

(a) An agreement under this subchapter supersedes a previous statute concerning wages, salaries, rates of pay, hours of work, or other terms and conditions of employment to the extent of any conflict with the statute.

(b) An agreement under this subchapter preempts any contrary statute, executive order, local ordinance, or rule adopted by the state or a political subdivision or agent of the state, including a personnel board, a civil service commission, or a home-rule municipality.

(c) An agreement under this subchapter may not diminish or qualify any right, benefit, or privilege of an employee under this chapter or other law unless approved by a majority vote by secret ballot of the members of the association recognized as a sole and exclusive bargaining agent.

§ 143.308. Repeal of Agreement by Electorate

Not later than the 45th day after the date an agreement is ratified by both the municipality and

the association, a petition signed by at least 10 percent of the qualified voters of the municipality may be presented to the municipal secretary calling an election for the repeal of the agreement. On receipt of the petition by the municipal secretary, the governing body shall reconsider the agreement and either repeal the agreement or call an election of the qualified voters to determine if they desire to repeal the agreement. The election shall be called for the next municipal election or a special election called by the governing body for that purpose. If at the election a majority of the votes are cast in favor of the repeal of the adoption of the agreement, the agreement is void. The ballot shall be printed to permit voting for or against the proposition: "Repeal of the adoption of the agreement ratified by the municipality and the _____ (fire fighters or police officers, as appropriate) association concerning wages, salaries, rates of pay, hours of work, and other terms and conditions of employment."

§ 143.309. Protected Rights of Individual Employees

(a) For the purpose of any disciplinary appeal to the civil service commission or to a hearing examiner, a member of the bargaining unit may choose to be represented by any person of the member's choice or by the association.

(b) An agreement may not interfere with the right of a member of a bargaining unit to pursue allegations of discrimination based on race, creed, color, national origin, religion, age, sex, or disability with the Commission on Human Rights or the Equal Employment Opportunity Commission or to pursue affirmative action litigation.

§ 143.310. Binding Interest Arbitration

A municipality may be required to submit to binding interest arbitration only if approved by a majority of those voting in a public referendum conducted in accordance with the municipality's charter. This subsection does not affect any disciplinary arbitration or arbitration provision in a ratified agreement.

§ 143.311. Appointments to Classification Immediately Below Department Head

Section 143.014(c) does not apply to a municipality to which this subchapter applies.

§ 143.312. Investigation of Fire Fighters and Police Officers

(a) This section does not apply to a municipality to which Section 143.123 applies.

(b) In this section:

(1) "Complainant" means a person claiming to be the victim of misconduct by a fire fighter or police officer.

(2) "Investigation" means an administrative investigation, conducted by the municipality, of alleged misconduct by a fire fighter or police officer that could result in punitive action against that person.

(3) "Investigator" means an agent or employee of the municipality who is assigned to conduct an investigation.

(4) "Normally assigned working hours" includes those hours during which a fire fighter or police officer is actually at work or at the person's assigned place of work, but does not include any time when the person is off duty on authorized leave, including sick leave.

(5) "Punitive action" means a disciplinary suspension, indefinite suspension, demotion in rank, written reprimand, or any combination of those actions.

(c) An investigator may interrogate a fire fighter or police officer who is the subject of an investigation only during the fire fighter's or police officer's normally assigned working hours unless:

(1) the seriousness of the investigation, as determined by the fire fighter's or police officer's department head or the department head's designee, requires interrogation at another time; and

(2) the fire fighter or police officer is compensated for the interrogation time on an overtime basis.

(d) The department head may not consider work time missed from regular duties by a fire fighter or police officer due to participation in the conduct of an investigation in determining whether to impose a punitive action or in determining the severity of a punitive action.

(e) An investigator may not interrogate a fire fighter or police officer who is the subject of an investigation or conduct any part of the investigation at that person's home without that person's permission.

(f) A person may not be assigned to conduct an investigation if the person is the complainant, the ultimate decision-maker regarding disciplinary action, or a person who has any personal involvement regarding the alleged misconduct. A fire fighter or police officer who is the subject of an investigation has the right to inquire and, on inquiry, to be informed of the identities of each investigator participating in an interrogation of the fire fighter or police officer.

(g) Not less than 48 hours before an investigator begins the initial interrogation of a fire fighter or police officer who is the subject of an investigation, the investigator must inform the fire fighter or police officer in writing of the allegations in the complaint. An investigator may not interrogate a fire fighter or police officer based on a complaint by a complainant who is not a fire fighter or police officer unless the complainant verifies the complaint in writing before a public officer who is authorized by law to take statements under oath. In an investigation under this subsection, an investigator may interrogate a fire fighter or police officer about events or conduct reported by a witness who is not a complainant without disclosing the name of the witness. An interrogation may be based on a complaint from an anonymous complainant if the departmental employee receiving the anonymous complaint certifies in writing, under oath, that the complaint was anonymous. This subsection does not apply to an on-the-scene investigation that occurs immediately after an incident being investigated, except that the fire fighter or police officer under investigation must be furnished, as soon as practicable, a written statement of the allegations in the complaint.

(h) An interrogation session of a fire fighter or police officer who is the subject of an investigation may not be unreasonably long. In determining reasonableness, the gravity and complexity of the investigation must be considered. The investigators shall allow reasonable interruptions to permit the fire fighter or police officer to attend to personal physical necessities.

(i) An investigator may not threaten a fire fighter or police officer who is the subject of an investigation with punitive action during an interrogation. An investigator may inform a fire fighter or police officer that failure to answer truthfully reasonable questions directly related to the investigation or to cooperate fully in the conduct of the investigation may result in punitive action.

(j) If prior notification of intent to record an interrogation is given to the other party, either the investigator or the fire fighter or police officer who is the subject of an interrogation may record the interrogation.

(k) If an investigation does not result in punitive action against a fire fighter or police officer but does result in a written reprimand or an adverse finding or determination regarding that person, the reprimand, finding, or determination may not be placed in that person's personnel file unless the fire fighter or police officer is first given an opportunity to read and sign the document. If the fire fighter or police officer refuses to sign the reprimand, finding, or determination, it may be placed in the personnel file with a notation that the person refused to sign it. A fire fighter or police officer may respond in writing to a reprimand, finding, or determination that is placed in the person's personnel file under this subsection by submitting a written response to the department head not later than the 10th day after the date the fire fighter or police officer is asked to sign the document. The response shall be placed in the personnel file. A fire fighter or police officer who receives a punitive action and who elects not to appeal the action may file a written response as prescribed by this subsection not later than the 10th day after the date the person is given written notice of the punitive action.

from the department head.

(l) A violation of this section may be considered by the commission or hearing examiner during a disciplinary appeal hearing if the violation substantially impaired the fire fighter's or police officer's ability to defend against the allegations of misconduct.

§ 143.313. Polygraph Examinations

(a) This section does not apply to a municipality to which Section 143.124 applies.

(b) A fire fighter employed by the municipality may not be required to submit to a polygraph examination as part of an internal investigation regarding the conduct of the fire fighter unless:

(1) the complainant submits to and passes a polygraph examination; or

(2) the fire fighter is ordered to take an examination under Subsection (f).

(c) Subsection (b) does not apply if the complainant is physically or mentally incapable of being polygraphed.

(d) For the purposes of this section, a fire fighter passes a polygraph examination if, in the opinion of the polygraph examiner, no deception is indicated in the examination regarding matters critical to the subject matter under investigation.

(e) The results of a polygraph examination that relate to the complaint under investigation are not admissible in a proceeding before the commission or a hearing examiner.

(f) The head of the fire department may order a fire fighter to submit to a polygraph examination if the fire department head:

(1) considers the circumstances to be extraordinary; or

(2) believes that the integrity of a fire fighter or the fire department is in question.

CHAPTER 150. MISCELLANEOUS PROVISIONS AFFECTING MUNICIPAL OFFICERS AND EMPLOYEES

SUBCHAPTER A. INVOLVEMENT OF FIRE FIGHTERS AND POLICE OFFICERS IN POLITICAL ACTIVITIES

- Sec. 150.001. Application of Subchapter to Certain Municipalities With Population of 10,000 or More.
- Sec. 150.002. Political Activities.
- Sec. 150.003. Restriction Prohibited.

SUBCHAPTER B. RESIDENCY

- Sec. 150.021. Residency Requirements for Municipal Employees

SUBCHAPTER A. INVOLVEMENT OF FIRE FIGHTERS AND POLICE OFFICERS IN POLITICAL ACTIVITIES

§ 150.001. Application of Subchapter to Certain Municipalities With Population of 10,000 or More

This subchapter applies only to a municipality with a population of 10,000 or more, but does not apply to a municipality in which Chapter 143 applies.

§ 150.002. Political Activities

- (a) While in uniform or on active duty, an employee of the fire or police department of the municipality may not engage in a political activity relating to a campaign for an elective office.
- (b) For the purposes of this section, a person engages in a political activity if the person:
- (1) makes a public political speech supporting or opposing a candidate;
 - (2) distributes a card or other political literature relating to the campaign of a candidate;
 - (3) wears a campaign button;
 - (4) circulates or signs a petition for a candidate;
 - (5) solicits votes for a candidate; or
 - (6) solicits campaign contributions for a candidate.
- (c) While out of uniform and not on active duty, an employee of the fire or police department may engage in a political activity relating to a campaign for an elective office, including each activity

listed by Subsection (b), except that the person may not solicit campaign contributions for a candidate other than from members of an employee organization to which that person belongs.

§ 150.003. Restriction Prohibited

The municipality may not restrict the right of an employee of the fire or police department to engage in a political activity permitted by this subchapter.

SUBCHAPTER B. RESIDENCY REQUIREMENTS

§ 150.021. Residency Requirements for Municipal Employees

(a) A municipality may not require residency within the municipal limits as a condition of employment with the municipality. A municipality may require residency within the United States as a condition of employment.

(b) The prohibition under Subsection (a) does not apply to residency requirements for:

(1) candidates for or holders of a municipal office, including a position on the governing body of the municipality; or

(2) municipal department heads appointed by the mayor or governing body of the municipality.

(c) The governing body of a municipality may prescribe reasonable standards with respect to the time within which municipal employees who reside outside the municipal limits must respond to a civil emergency. The standards may not be imposed retroactively on any person in the employ of the municipality at the time the standards are adopted.

CHAPTER 173. TEMPORARY SALARY PAYMENTS FOR MUNICIPAL AND COUNTY EMPLOYEES CALLED TO ACTIVE DUTY

§ 173.001. Employees Subject to Chapter

(a) This chapter applies to a municipal or county employee who is a member of a reserve component of the armed forces of the United States, including any appropriate part of the state military forces, and who by virtue of that membership is called to active duty in the armed forces of the United States by federal authority without the person's consent before, on, or after the effective date of this chapter as part of a partial or total mobilization of the reserve components of the armed forces.

(b) This chapter does not apply to a person who:

(1) ceases to be employed by a municipality or county because the person resigns or is terminated for a reason that is not a direct consequence of the person's call to active duty as described under Subsection (a); or

(2) commits a voluntary act that extends the person's original assigned service to active duty.

§ 173.002. Salary Continuation

(a) Notwithstanding any other law, if a person to whom this chapter applies exhausts all military leave to which the person is entitled under state law, the municipality or county may continue the person's municipal or county salary payments under this chapter in an amount determined by the governing body of the municipality or the commissioners court, as applicable, until the person is no longer required to serve on active duty under the circumstances described by Section 173.001(a).

(b) The salary payments authorized by Subsection (a) are payable:

(1) from the general fund of the municipality or county or other funds available for that purpose on the date the person is called to active duty; and

(2) only for a municipal or county pay period that began on or after September 1, 2002.

§ 173.003. Manner of Payment

Salary payments under this chapter may be paid in the manner directed by the person, subject to the approval of the governing body of a municipality or the commissioners court of a county, as applicable, except as provided by other law.

§ 173.004. Rules

The governing body of a municipality and the commissioners court of a county may adopt rules to implement this chapter.

§ 173.005. Other Benefits Unaffected

This chapter authorizes the continuation of municipal or county salary payments only as provided by Sections 173.001-173.004.

CHAPTER 174. FIRE AND POLICE EMPLOYEE RELATIONS

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 174.001. Short Title.
- Sec. 174.002. Policy.
- Sec. 174.003. Definitions
- Sec. 174.004. Liberal Construction.
- Sec. 174.005. Preemption of Other Law.
- Sec. 174.006. Effect on Civil Service Provisions.
- Sec. 174.007. Effect on Existing Benefits.
- Sec. 174.008. Waiver of Sovereign Immunity

SUBCHAPTER B. CONDITIONS OF EMPLOYMENT AND RIGHT TO ORGANIZE

- Sec. 174.021. Prevailing Wage and Working Conditions Required.
- Sec. 174.022. Certain Public Employers Considered to be in Compliance.
- Sec. 174.023. Right to Organize and Bargain Collectively.

SUBCHAPTER C. ADOPTION AND REPEAL OF COLLECTIVE BARGAINING PROVISIONS

- Sec. 174.051. Adoption Election
- Sec. 174.052. Effect of Successful Adoption Election.
- Sec. 174.053. Repeal Election.
- Sec. 174.054. Effect of Successful Repeal Election.
- Sec. 174.055. Frequency of Elections.

SUBCHAPTER D. COLLECTIVE BARGAINING

- Sec. 174.101. Recognition of Bargaining Agent for Fire Fighters.
- Sec. 174.102. Recognition of Bargaining Agent for Police Officers.
- Sec. 174.103. Single Bargaining Agent for Fire Fighters and Police Officers.
- Sec. 174.104. Question Regarding Representation.
- Sec. 174.105. Duty to Bargain Collectively in Good Faith.

- Sec. 174.106. Designation of Negotiator.
- Sec. 174.107. Notice to Public Employer Regarding Certain Issues.
- Sec. 174.108. Open Deliberations.
- Sec. 174.109. Effect of Agreement.

SUBCHAPTER E. MEDIATION; ARBITRATION

- Sec. 174.151. Mediation.
- Sec. 174.152. Impasse.
- Sec. 174.153. Request for Arbitration; Agreement to Arbitrate.
- Sec. 174.154. Arbitration Board
- Sec. 174.155. Arbitration Hearing.
- Sec. 174.156. Scope of Arbitration.
- Sec. 174.157. Evidence; Oath; Subpoena.
- Sec. 174.158. Arbitration Award.
- Sec. 174.159. Effect of Award.
- Sec. 174.160. Amendment of Award.
- Sec. 174.161. Beginning of New Fiscal Year.
- Sec. 174.162. Extension of Period.
- Sec. 174.163. Compulsory Arbitration Not Required.
- Sec. 174.164. Compensation of Arbitrators; Expenses of Arbitration.

SUBCHAPTER F. STRIKES; LOCKOUTS

- Sec. 174.201. Definition.
- Sec. 174.202. Strikes, Slowdowns, and Lockouts Prohibited.
- Sec. 174.203. Lockout by Municipality; Injunction; Penalty.
- Sec. 174.204. Strike; Penalty Against Association.
- Sec. 174.205. Strike; Penalty Against Individual.

SUBCHAPTER G. JUDICIAL ENFORCEMENT AND REVIEW

- Sec. 174.251. Judicial Enforcement Generally.
- Sec. 174.252. Judicial Enforcement When Public Employer Declines Arbitration.
- Sec. 174.253. Judicial Review of Arbitration Award.

SUBCHAPTER A. GENERAL PROVISIONS

§ 174.001. Short Title

This chapter may be cited as The Fire and Police Employee Relations Act.

§ 174.002. Policy

(a) The policy of this state is that a political subdivision shall provide its fire fighters and police officers with compensation and other conditions of employment that are substantially the same as compensation and conditions of employment prevailing in comparable private sector employment.

(b) The policy of this state is that fire fighters and police officers, like employees in the private sector, should have the right to organize for collective bargaining, as collective bargaining is a fair and practical method for determining compensation and other conditions of employment. Denying fire fighters and police officers the right to organize and bargain collectively would lead to strife and

unrest, consequently injuring the health, safety, and welfare of the public.

(c) The health, safety, and welfare of the public demands that strikes, lockouts, and work stoppages and slowdowns of fire fighters and police officers be prohibited, and therefore it is the state's duty to make available reasonable alternatives to strikes by fire fighters and police officers.

(d) Because of the essential and emergency nature of the public service performed by fire fighters and police officers, a reasonable alternative to strikes is a system of arbitration conducted under adequate legislative standards. Another reasonable alternative, if the parties fail to agree to arbitrate, is judicial enforcement of the requirements of this chapter regarding compensation and conditions of employment applicable to fire fighters and police officers.

(e) With the right to strike prohibited, to maintain the high morale of fire fighters and police officers and the efficient operation of the departments in which they serve, alternative procedures must be expeditious, effective, and binding.

§ 174.003. Definitions

In this chapter:

(1) "Association" means any type of organization, including an agency or employee representation committee or plan, in which fire fighters, police officers, or both, participate and that exists, in whole or in part, to deal with one or more public or private employers concerning grievances, labor disputes, or conditions of employment affecting fire fighters, police officers, or both.

(2) "Fire fighter" means a permanent, paid employee of the fire department of a political subdivision. The term does not include:

- (A) the chief of the department; or
- (B) a volunteer fire fighter.

(3) "Police officer" means a paid employee who is sworn, certified, and full-time, and who regularly serves in a professional law enforcement capacity in the police department of a political subdivision. The term does not include the chief of the department.

(4) "Political subdivision" includes a municipality.

(5) "Public employer" means the official or group of officials of a political subdivision whose duty is to establish the compensation, hours, and other conditions of employment of fire fighters, police officers, or both, and may include the mayor, city manager, town manager, town administrator, municipal governing body, director of personnel, personnel board, commissioners, or another official or combination of those persons.

§ 174.004. Liberal Construction

This chapter shall be liberally construed.

§ 174.005. Preemption of Other Law

This chapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by the state or by a political subdivision or agent of the state, including a personnel board, civil service commission, or home-rule municipality.

§ 174.006. Effect on Civil Service Provisions

(a) A state or local civil service provision prevails over a collective bargaining contract under this chapter unless the collective bargaining contract specifically provides otherwise.

(b) A civil service provision may not be repealed or modified by arbitration or judicial action but may be interpreted or enforced by an arbitrator or court.

(c) This chapter does not limit the authority of a municipal fire chief or police chief under Chapter 143 except as modified by the parties through collective bargaining.

§ 174.007. Effect on Existing Benefits

This chapter may not be construed as repealing any existing benefit provided by statute or ordinance concerning fire fighters' or police officers' compensation, pensions, retirement plans, hours of work, conditions of employment, or other emoluments. This chapter is in addition to the benefits provided by existing statutes and ordinances.

§ 174.008. Waiver of Immunity

This chapter is binding and enforceable against the employing public employer, and sovereign or governmental immunity from suit and liability is waived only to the extent necessary to enforce this chapter against that employer.

SUBCHAPTER B. CONDITIONS OF EMPLOYMENT AND RIGHT TO ORGANIZE

§ 174.021. Prevailing Wage and Working Conditions Required

A political subdivision that employs fire fighters, police officers, or both, shall provide those employees with compensation and other conditions of employment that are:

- (1) substantially equal to compensation and other conditions of employment that prevail in comparable employment in the private sector; and
- (2) based on prevailing private sector compensation and conditions of employment in the labor market area in other jobs that require the same or similar skills, ability, and training and may be performed under the same or similar conditions.

§ 174.022. Certain Public Employers Considered to be in Compliance

(a) A public employer that has reached an agreement with an association on compensation or other conditions of employment as provided by this chapter is considered to be in compliance with the requirements of Section 174.021 as to the conditions of employment for the duration of the agreement.

(b) If an arbitration award is rendered as provided by Subchapter E, the public employer involved is considered to be in compliance with the requirements of Section 174.021 as to the conditions of employment provided by the award for the duration of the collective bargaining period to which the award applies.

§ 174.023. Right to Organize and Bargain Collectively

On adoption of this chapter or the law codified by this chapter by a political subdivision to which this chapter applies, fire fighters, police officers, or both are entitled to organize and bargain collectively with their public employer regarding compensation, hours, and other conditions of employment.

SUBCHAPTER C. ADOPTION AND REPEAL OF COLLECTIVE BARGAINING PROVISIONS

§ 174.051. Adoption Election

(a) The governing body of a political subdivision to which this chapter applies shall order an election for the adoption of this chapter on receiving a petition signed by qualified voters of the political subdivision in a number equal to or greater than the lesser of:

- (1) 20,000; or
- (2) five percent of the number of qualified voters voting in the political subdivision in the

preceding general election for state and county officers.

(b) The governing body shall hold the election on the first authorized uniform election date prescribed by Chapter 41, Election Code, that allows sufficient time for compliance with any requirements established by law.

(c) The ballot in the election shall be printed to provide for voting for or against the proposition: "Adoption of the state law applicable to (fire fighters, police officers, or both, as applicable) that establishes collective bargaining if a majority of the affected employees favor representation by an employees association, preserves the prohibition against strikes and lockouts, and provides penalties for strikes and lockouts."

§ 174.052. Effect of Successful Adoption Election

If a majority of the votes cast in an election under Section 174.051 favor adoption of this chapter, the governing body shall place this chapter in effect not later than the 30th day after the beginning of the first fiscal year of the political subdivision after the election.

§ 174.053. Repeal Election

(a) The governing body of a political subdivision in which the collective bargaining provisions of this chapter have been in effect for at least one year shall order an election for the repeal of the adoption of this chapter on receiving a petition signed by qualified voters of the political subdivision in a number equal to or greater than the lesser of:

(1) 20,000; or

(2) five percent of the number of qualified voters voting in the political subdivision in the preceding general election for state and county officers.

(b) The ballot in the election shall be printed to provide for voting for or against the proposition: "Repeal of the adoption of the state law applicable to (fire fighters, police officers, or both, as applicable) that establishes collective bargaining if a majority of the affected employees favor representation by an employees association, preserves the prohibition against strikes and lockouts, and provides penalties for strikes and lockouts."

§ 174.054. Effect of Successful Repeal Election

If a majority of the votes cast in an election under Section 174.053 favor repeal of the adoption of this chapter, the collective bargaining provisions of this chapter are void as to the political subdivision.

§ 174.055. Frequency of Elections

If an election for the adoption or the repeal of the adoption of this chapter is held under this subchapter, a like petition for a subsequent election may not be submitted before the first anniversary of the date of the preceding election.

SUBCHAPTER D. COLLECTIVE BARGAINING

§ 174.101. Recognition of Bargaining Agent for Fire Fighters

A public employer shall recognize an association selected by a majority of the fire fighters of the fire department of a political subdivision as the exclusive bargaining agent for the fire fighters of that department unless a majority of the fire fighters withdraw the recognition.

§ 174.102. Recognition of Bargaining Agent for Police Officers

A public employer shall recognize an association selected by a majority of the police officers of

the police department of a political subdivision as the exclusive bargaining agent for the police officers of that department unless a majority of the police officers withdraw the recognition.

§ 174.103. Single Bargaining Agent for Fire Fighters and Police Officers

(a) Except as provided by Subsection (b), the fire and police departments of a political subdivision are separate collective bargaining units under this chapter.

(b) Associations that represent employees in the fire and police departments of a political subdivision may voluntarily join together for collective bargaining with the public employer.

§ 174.104. Question Regarding Representation

(a) A question of whether an association is the majority representative of the employees of a department under Sections 174.101B174.103 shall be resolved by a fair election conducted according to procedures agreed on by the parties.

(b) If the parties are unable to agree on election procedures under Subsection (a), either party may request the American Arbitration Association to conduct the election and certify the results. Certification of the results of an election under this section shall resolve the question regarding representation. The public employer shall pay the expenses of the election, except that if two or more associations seek recognition as the bargaining agent, the associations shall pay the costs of the election equally.

§ 174.105. Duty to Bargain Collectively in Good Faith

(a) If the fire fighters, police officers, or both of a political subdivision are represented by an association as provided by Sections 174.101B174.104, the public employer and the association shall bargain collectively.

(b) For purposes of this section, the duty to bargain collectively means a public employer and an association shall:

- (1) meet at reasonable times;
- (2) confer in good faith regarding compensation, hours, and other conditions of employment or the negotiation of an agreement or a question arising under an agreement; and
- (3) execute a written contract incorporating any agreement reached, if either party requests a written contract.

(c) This section does not require a public employer or an association to:

- (1) agree to a proposal; or
- (2) make a concession.

§ 174.106. Designation of Negotiator

A public employer or an association may designate one or more persons to negotiate or bargain on its behalf.

§ 174.107. Notice to Public Employer Regarding Certain Issues

If compensation or another matter that requires an appropriation of money by any governing body is included for collective bargaining under this chapter, an association shall serve on the public employer a written notice of its request for collective bargaining at least 120 days before the date on which the public employer's current fiscal operating budget ends.

§ 174.108. Open Deliberations

A deliberation relating to collective bargaining between a public employer and an association, a deliberation by a quorum of an association authorized to bargain collectively, or a deliberation by a member of a public employer authorized to bargain collectively shall be open to the public and comply with state law.

§ 174.109. Effect of Agreement

An agreement under this chapter is binding and enforceable against a public employer, an association, and a fire fighter or police officer covered by the agreement.

SUBCHAPTER E. MEDIATION; ARBITRATION

§ 174.151. Mediation

(a) A public employer and an association that is a bargaining agent may use mediation to assist them in reaching an agreement.

(b) If a mediator is used, then a mediator may be appointed by agreement of the parties or by an appropriate state agency.

(c) A mediator may:

(1) hold separate or joint conferences as the mediator considers expedient to settle issues voluntarily, amicably, and expeditiously; and

(2) notwithstanding Subsection (d), recommend or suggest to the parties any proposal or procedure that in the mediator's judgment might lead to settlement.

(d) A mediator may not:

(1) make a public recommendation on any negotiation issue in connection with the mediator's service; or

(2) make a public statement or report that evaluates the relative merits of the parties' positions.

§ 174.152. Impasse

(a) For purposes of this subchapter, an impasse in the collective bargaining process is considered to have occurred if the parties do not settle in writing each issue in dispute before the 61st day after the date on which the collective bargaining process begins.

(b) The period specified in Subsection (a) may be extended by written agreement of the parties. An extension must be for a definite period not to exceed 15 days.

§ 174.153. Request for Arbitration; Agreement to Arbitrate

(a) A public employer or an association that is a bargaining agent may request the appointment of an arbitration board if:

(1) the parties:

(A) reach an impasse in collective bargaining; or

(B) are unable to settle after the appropriate lawmaking body fails to approve a contract reached through collective bargaining;

(2) the parties made every reasonable effort, including mediation, to settle the dispute through good-faith collective bargaining; and

(3) the public employer or association gives written notice to the other party, specifying the issue in dispute.

(b) A request for arbitration must be made not later than the fifth day after:

(1) the date an impasse was reached under Section 174.152; or

(2) the expiration of an extension period under Section 174.152.

(c) An election by both parties to arbitrate must:

(1) be made not later than the fifth day after the date arbitration is requested; and

(2) be a written agreement to arbitrate.

(d) A party may not request arbitration more than once in a fiscal year.

§ 174.154. Arbitration Board

(a) Not later than the fifth day after the date an agreement to arbitrate is executed, each party shall:

(1) select one arbitrator; and

(2) immediately notify the other party in writing of the name and address of the arbitrator selected.

(b) Not later than the 10th day after the date an agreement to arbitrate is executed, the arbitrators named under Subsection (a) shall attempt to select a third (neutral) arbitrator. If the arbitrators are unable to agree on a third arbitrator, either party may request the American Arbitration Association to select the third arbitrator, and the American Arbitration Association may appoint the third arbitrator according to its fair and regular procedures. Unless both parties consent, the third arbitrator may not be the same individual who served as a mediator under Section 174.151.

(c) The arbitrator selected under Subsection (b) presides over the arbitration board.

§ 174.155. Arbitration Hearing

(a) A presiding arbitrator shall:

(1) call a hearing to be held not later than the 10th day after the date on which the presiding arbitrator is appointed; and

(2) notify the other arbitrators, the public employer, and the association in writing of the time and place of the hearing, not later than the eighth day before the hearing.

(b) An arbitration hearing shall end not later than the 20th day after the date the hearing begins.

(c) An arbitration hearing shall be informal.

§ 174.156. Scope of Arbitration

(a) The issues to be arbitrated are all matters the parties are unable to resolve through collective bargaining and mediation procedures required by this chapter.

(b) An arbitration board shall render an award in accordance with the requirements of Section 174.021. In settling disputes relating to compensation, hours, and other conditions of employment, the board shall consider:

(1) hazards of employment;

(2) physical qualifications;

(3) educational qualifications;

(4) mental qualifications;

(5) job training;

(6) skills; and

(7) other factors.

§ 174.157. Evidence; Oath; Subpoena

(a) The rules of evidence applicable to judicial proceedings are not binding in an arbitration hearing.

(b) An arbitration board may:

(1) receive in evidence any documentary evidence or other information the board considers relevant;

(2) administer oaths; and

(3) issue subpoenas to require:

(A) the attendance and testimony of witnesses; and

(B) the production of books, records, and other evidence relevant to an issue presented to the board for determination.

§ 174.158. Arbitration Award

- (a) Not later than the 10th day after the end of the hearing, an arbitration board shall:
 - (1) make written findings; and
 - (2) render a written award on the issues presented to the board.
- (b) A copy of the findings and award shall be mailed or delivered to the public employer and the association.
- (c) An increase in compensation awarded by an arbitration board under this subchapter may take effect only at the beginning of the next fiscal year after the date of the award.
- (d) If a new fiscal year begins after the initiation of arbitration procedures under this subchapter, Subsection (c) does not apply and an increase in compensation may be retroactive to the beginning of the fiscal year.

§ 174.159. Effect of Award

- If a majority decision of an arbitration board is supported by competent, material, and substantial evidence on the whole record, the decision:
- (1) is final and binding on the parties; and
 - (2) may be enforced by either party or the arbitration board in a district court for the judicial district in which a majority of the affected employees reside.

§ 174.160. Amendment of Award

The parties to an arbitration award may amend the award by written agreement at any time.

§ 174.161. Beginning of New Fiscal Year

- If a new fiscal year begins after the initiation of arbitration procedures under this subchapter but before an award is rendered or enforced:
- (1) the dispute is not moot;
 - (2) the jurisdiction of the arbitration board is not impaired; and
 - (3) the arbitration award is not impaired.

§ 174.162. Extension of Period

- A period specified by Section 174.155 or 174.158 may be extended:
- (1) by the written agreement of the parties for a reasonable period; or
 - (2) by the arbitration board for good cause for one or more periods that in the aggregate do not exceed 20 days.

§ 174.163. Compulsory Arbitration Not Required

This chapter does not require compulsory arbitration.

§ 174.164. Compensation of Arbitrators; Expenses of Arbitration

- (a) The compensation of an arbitrator selected by a public employer shall be paid by the public employer.
- (b) The compensation, if any, of an arbitrator selected by fire fighters, police officers, or both shall be paid by the association representing the employees.
- (c) The public employer and the association representing the employees shall jointly pay in even proportions:
 - (1) the compensation of the neutral arbitrator; and
 - (2) the stenographic and other expenses incurred by the arbitration board in connection with

the arbitration proceedings.

(d) If a party to arbitration requires a transcript of the arbitration proceedings, the party shall pay the cost of the transcript.

SUBCHAPTER F. STRIKES; LOCKOUTS

§ 174.201. Definition

In this subchapter, "strike" means failing to report for duty in concerted action with others, willfully being absent from one's position, stopping work, abstaining from the full, faithful, and proper performance of the duties of employment, or interfering with the operation of a municipality in any manner, to induce, influence, or coerce a change in the conditions, compensation, rights, privileges, or obligations of employment.

§ 174.202. Strikes, Slowdowns, and Lockouts Prohibited

- (a) A fire fighter or police officer may not engage in a strike or slowdown.
- (b) A lockout of fire fighters or police officers is prohibited.

§ 174.203. Lockout by Municipality; Injunction; Penalty

If a municipality or its designated agent or a department or agency head engages in a lockout of fire fighters or police officers, a court shall:

- (1) prohibit the lockout;
- (2) impose a fine not to exceed \$2,000 on any individual violator; or
- (3) both prohibit the lockout and impose the fine.

§ 174.204. Strike; Penalty Against Association

(a) A district court for the judicial district in which a municipality is located that finds that an association has called, ordered, aided, or abetted a strike by fire fighters or police officers shall:

- (1) impose a fine on the association for each day of the strike equal to 1/26 of the total of the association's annual membership dues, but not less than \$2,500 nor more than \$20,000; and
- (2) order the forfeiture of any membership dues check-off for a specified period not to exceed 12 months.

(b) If the court finds that the municipality or its representative engaged in acts of extreme provocation that detract substantially from the association's responsibility for the strike, the court may reduce the amount of the fine.

(c) An association that appeals a fine under Subsection (b) is not required to pay the fine until the appeal is finally determined.

§ 174.205. Strike; Penalty Against Individual

If a fire fighter or police officer engages in a strike, interferes with the municipality, prevents the municipality from engaging in its duty, directs any employee of the municipality to decline to work or to stop or slow down work, causes another to fail or refuse to deliver goods or services to the municipality, pickets for any of those unlawful acts, or conspires to perform any of those acts:

- (1) the fire fighter's or police officer's compensation in any form may not increase in any manner until after the first anniversary of the date the individual resumes normal working duties; and
- (2) the fire fighter or police officer shall be on probation for two years regarding civil service status, tenure of employment, or contract of employment to which the individual was previously entitled.

SUBCHAPTER G. JUDICIAL ENFORCEMENT AND REVIEW

§ 174.251. Judicial Enforcement Generally

A district court for the judicial district in which a municipality is located, on the application of a party aggrieved by an act or omission of the other party that relates to the rights or duties under this chapter, may issue a restraining order, temporary or permanent injunction, contempt order, or other writ, order, or process appropriate to enforce this chapter.

§ 174.252. Judicial Enforcement When Public Employer Declines Arbitration

(a) If an association requests arbitration as provided by Subchapter E and a public employer refuses to engage in arbitration, on the application of the association, a district court for the judicial district in which a majority of affected employees reside may enforce the requirements of Section 174.021 as to any unsettled issue relating to compensation or other conditions of employment of fire fighters, police officers, or both.

(b) If the court finds that the public employer has violated Section 174.021, the court shall:

(1) order the public employer to make the affected employees whole as to the employees' past losses;

(2) declare the compensation or other conditions of employment required by Section 174.021 for the period, not to exceed one year, as to which the parties are bargaining; and

(3) award the association reasonable attorney's fees.

(c) The court costs of an action under this section, including costs for a master if one is appointed, shall be taxed to the public employer.

§ 174.253. Judicial Review of Arbitration Award

(a) An award of an arbitration board may be reviewed by a district court for the judicial district in which the municipality is located only on the grounds that:

(1) the arbitration board was without jurisdiction;

(2) the arbitration board exceeded its jurisdiction;

(3) the order is not supported by competent, material, and substantial evidence on the whole record; or

(4) the order was obtained by fraud, collusion, or similar unlawful means.

(b) The pendency of a review proceeding does not automatically stay enforcement of the arbitration board's order.

CHAPTER 175. RIGHT OF CERTAIN MUNICIPAL AND COUNTY EMPLOYEES TO PURCHASE CONTINUED HEALTH COVERAGE AT RETIREMENT

- Sec. 175.001. Applicability.
- Sec. 175.002. Right to Purchase Continued Coverage.
- Sec. 175.003. Level of Coverage.
- Sec. 175.004. Payment for Coverage.
- Sec. 175.005. Duty to Inform Retiree of Rights.
- Sec. 175.006. Certain Matters not Affected.
- Sec. 175.007. Exemptions.

§ 175.001. Applicability

This chapter applies to a person who:

(1) retires from county employment in a county with a population of 75,000 or more or municipal

employment in a municipality with a population of 25,000 or more; and

(2) is entitled to receive retirement benefits from a county or municipal retirement plan.

§ 175.002. Right to Purchase Continued Coverage

(a) A person to whom this chapter applies is entitled to purchase continued health benefits coverage for the person and the person's dependents as provided by this chapter unless the person is eligible for group health benefits coverage through another employer. The coverage shall be provided under the group health insurance plan or group health coverage plan provided by or through the employing county or municipality to its employees.

(b) To receive continued coverage under this chapter, the person must inform the employing county or municipality, not later than the day on which the person retires from the county or municipality, that the person elects to continue coverage.

(c) If the person elects to continue coverage for the person and on any subsequent date elects to discontinue such coverage, the person is no longer eligible for coverage under this chapter.

(d) If the person elects to continue coverage for any dependent and on any subsequent date elects to discontinue such coverage, the dependent is no longer eligible for coverage under this chapter.

§ 175.003. Level of Coverage

(a) The person may elect to cover the same persons who were covered under the county's or municipality's group health insurance plan or group health coverage plan through the person at the time the person left county or municipal employment, or the person may elect to discontinue coverage for one or more persons. A person who was not covered under the plan at the time the person to whom this chapter applies left county or municipal employment is not eligible for coverage under this chapter.

(b) Except as provided by Subsections (c) and (d), the level of coverage provided under this chapter at any given time is the same level of coverage provided to current employees of the county or municipality at that time.

(c) A county or municipality may substitute Medicare supplement health benefits coverage as the coverage provided for a person who receives health benefits coverage under this chapter, including a dependent, after the date that the person becomes eligible for federal Medicare benefits.

(d) The person may elect to continue coverage at a reduced level, if offered by the county or municipality.

§ 175.004. Payment for Coverage

A person who is entitled to continued coverage under this chapter is entitled to make payments for the coverage at the same time and to the same entity that payments for the coverage are made by current employees of the county or municipality.

§ 175.005. Duty to Inform Retiree of Rights

A county and a municipality shall provide written notice to a person to whom this chapter may apply of the person's rights under this chapter not later than the date the person retires from the county or municipality. A county or municipality may fulfill its requirements under this section by placing the written notice required by this section in a personnel manual or employee handbook that is available to all employees.

§ 175.006. Certain Matters not Affected

This chapter does not:

- (1) prohibit a county or municipality from uniformly changing the group health insurance plan or group health coverage plan provided for its employees and retirees;
- (2) affect the definition of a dependent or the eligibility requirements for a dependent under a plan;
- (3) prohibit a county or municipality from agreeing with a person to deduct the cost of coverage provided under this chapter from a pension check;
- (4) prohibit a county or municipality from agreeing with a person to pay for the coverage provided under this chapter provided the person reimburses the county or municipality for the actual cost of the coverage;
- (5) prohibit a county, municipality, or a pool established under Chapter 172 from increasing the cost of group health coverage to its employees and to persons covered under this chapter to reflect the increased cost, if any, attributable to compliance with this chapter;
- (6) affect the right of a county or municipality to provide coverage under Chapter 172; or
- (7) affect the right of a county, municipality, or a pool established under Chapter 172 to offer the coverage at the same rate that is available to active employees or to offer the coverage at a reasonable or actual rate established for retirees that may be greater than the rate offered to active employees.

§ 175.007. Exemptions

- (a) A county or municipality that does not provide health benefits coverage through a self-insured plan or a plan authorized under Chapter 172 is not required to provide coverage under this chapter if the county or municipality makes a good faith effort to purchase insurance coverage that includes coverage required by this chapter from an insurance company authorized to do business in this state and from pools established under Chapter 172 but is unable to find a provider for the coverage.
- (b) A county or municipality that is providing coverage substantially similar to or better than the coverage required by this chapter is exempt from this chapter.

CHAPTER 180. MISCELLANEOUS PROVISIONS AFFECTING OFFICERS AND EMPLOYEES OF MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

- Sec. 180.001. Coercion of Police Officer or Fire Fighter in Connection With Political Campaign.
- Sec. 180.002. Defense of Civil Suits Against Peace Officers, Fire Fighters, and Emergency Medical Personnel.
- Sec. 180.004. Working Conditions For Pregnant Employees.
- Sec 180.006 Sovereign or Governmental Immunity Waived For Certain Claims

§ 180.001. Coercion of Police Officer or Fire Fighter in Connection With Political Campaign

(a) An individual commits an offense if the individual coerces a police officer or a fire fighter to participate or to refrain from participating in a political campaign.

(b) An offense under this section is a misdemeanor and is punishable by a fine of not less than \$500 or more than \$2,000, confinement in the county jail for not more than two years, or both a fine and confinement.

§ 180.002. Defense of Civil Suits Against Peace Officers, Fire Fighters, and Emergency Medical Personnel

(a) In this section, "peace officer" has the meaning assigned by Article 2.12, Code of Criminal Procedure.

(b) A municipality or special purpose district shall provide a municipal or district employee who is a peace officer, fire fighter, or emergency medical services employee with legal counsel without cost to the employee to defend the employee against a suit for damages by a party other than a governmental entity if:

(1) legal counsel is requested by the employee; and

(2) the suit involves an official act of the employee within the scope of the employee's authority.

(c) To defend the employee against the suit, the municipality or special purpose district may provide counsel already employed by it or may employ private counsel.

(d) If the municipality or special purpose district fails to provide counsel as required by Subsection (b), the employee may recover from it the reasonable attorney's fees incurred in defending the suit if the trier of fact finds:

(1) that the fees were incurred in defending a suit covered by Subsection (b); and

(2) that the employee is without fault or that the employee acted with a reasonable good faith belief that the employee's actions were proper.

§ 180.004. Working Conditions for Pregnant Employees

(a) In this section, "office" means a municipal or county office, department, division, program, commission, bureau, board, committee, or similar entity.

(b) A municipality or a county shall make a reasonable effort to accommodate an employee of the municipality or county who is determined by a physician to be partially physically restricted by a pregnancy.

(c) If the physician of a municipal or county employee certifies that the employee is unable to perform the duties of the employee's permanent work assignment as a result of the employee's pregnancy and if a temporary work assignment that the employee may perform is available in the same office, the office supervisor who is responsible for personnel decisions shall assign the employee to the temporary work assignment.

§ 180.006. SOVEREIGN OR GOVERNMENTAL IMMUNITY WAIVED FOR CERTAIN CLAIMS

- (a) This section applies only to a firefighter or police officer covered by:
- (1) Chapter 141, 142, or 143 or this chapter;
 - (2) a municipal charter provision conferring civil service benefits of a municipality that has not adopted Chapter 143; or
 - (3) a municipal ordinance enacted under Chapter 142 or 143.
- (b) A firefighter or police officer described by Subsection (a) who alleges the employing municipality's denial of monetary benefits associated with the recovery of back pay authorized under a provision listed in Subsection (a) or a firefighter described by Subsection (a) who alleges the denial of monetary civil penalties associated with recovery of back pay owed under Section 143.134(h) may seek judicial review of such denial only as provided in Subsections (e) and (f), provided that if there is no applicable grievance, administrative or contractual appeal procedure available under Subsection (e), the firefighter or police officer may file suit against the employing municipality directly in district court under the preponderance of the evidence standard of review.
- (c) Sovereign and governmental immunity of the employing municipality from suit and liability is waived only to the extent of liability for the monetary benefits or monetary civil penalties described by Subsection (b). This section does not waive sovereign or governmental immunity from suit or liability for any other claim, including a claim involving negligence, an intentional tort, or a contract unless otherwise provided by the statute.
- (d) This section does not:
- (1) grant immunity from suit to a local governmental entity;
 - (2) waive a defense or a limitation on damages, attorney's fees, or costs available to a party to a suit under this chapter or another statute, including a statute listed in Subsection (a)(1); or
 - (3) modify an agreement under Chapter 142, 143, or 174.
- (e) Before seeking judicial review as provided by Subsection (b), a firefighter or police officer must initiate action pursuant to any applicable grievance or administrative appeal procedures prescribed by state statute or agreement and must exhaust the grievance or administrative appeal procedure.
- (f) If judicial review is authorized under statute, judicial review of the grievance or administrative appeal decision is under the substantial evidence rule, unless a different standard of review is provided by the provision establishing the grievance or administrative appeal procedure.
- (g) This section does not apply to an action asserting a right or claim based wholly or partly, or directly or indirectly, on a referendum election held before January 1, 1980, or an ordinance or resolution implementing the referendum.

HEALTH AND SAFETY CODE

CHAPTER 81. COMMUNICABLE DISEASES

SUBCHAPTER C. REPORTS AND REPORTABLE DISEASES

Sec. 81.048. Notification of Emergency Personnel, Peace Officer and Fire Fighter.

Sec. 81.049. Failure to Report; Criminal Penalty.

Sec. 81.50. Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Reportable Diseases, Including HIV Infection.

Sec. 81.095. Testing For Accidental Exposure.

§ 81.048. Notification of Emergency Personnel, Peace Officers, and Fire Fighters

(a) The board shall:

- (1) designate certain reportable diseases for notification under this section; and
- (2) define the conditions that constitute possible exposure to those diseases.

(b) Notice of a positive test result for a reportable disease designated under Subsection (a) shall be given to an emergency medical service personnel, peace officer, or fire fighter as provided by this section if:

(1) the emergency medical service personnel, peace officer, or fire fighter delivered a person to a hospital as defined by Section 1.03, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes);

(2) the hospital has knowledge that the person has a reportable disease and has medical reason to believe that the person had the disease when the person was admitted to the hospital; and

(3) the emergency medical service personnel, peace officer, or fire fighter was exposed to the reportable disease during the course of duty.

(c) Notice of the possible exposure shall be given:

- (1) by the hospital to the local health authority;
- (2) by the local health authority to the director of the appropriate department of the entity that employs the emergency medical service personnel, peace officer, or fire fighter; and
- (3) by the director to the employee affected.

(d) A person notified of a possible exposure under this section shall maintain the confidentiality of the information as provided by this chapter.

(e) A person is not liable for good faith compliance with this section.

(f) This section does not create a duty for a hospital to perform a test that is not necessary for the medical management of the person delivered to the hospital.

§ 81.049. Failure to Report; Criminal Penalty

(a) A person commits an offense if the person knowingly fails to report a reportable disease or health condition under this subchapter.

(b) An offense under this section is a Class B misdemeanor.

§ 81.050. Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Reportable Diseases, Including HIV Infection

(a) The board by rule shall prescribe the criteria that constitute exposure to reportable diseases,

including HIV infection. The criteria must be based on activities that the United States Public Health Service determines pose a risk of infection.

(b) A person whose occupation or whose volunteer service is included in one or more of the following categories may request the department or a health authority to order testing of another person who may have exposed the person to a reportable disease, including HIV infection:

- (1) a law enforcement officer;
- (2) a fire fighter;
- (3) an emergency medical service employee or paramedic; or
- (4) a correctional officer.

(c) A request under this section may be made only if the person:

- (1) has experienced the exposure in the course of the person's employment or volunteer service;
- (2) believes that the exposure places the person at risk of a reportable disease, including HIV infection; and
- (3) presents to the department or health authority a sworn affidavit that delineates the reasons for the request.

(d) The department or the department's designee who meets the minimum training requirements prescribed by board rule shall review the person's request and inform the person whether the request meets the criteria establishing risk of infection with a reportable disease, including HIV infection.

(e) The department or the department's designee shall give the person who is subject to the order prompt and confidential written notice of the order. The order must:

- (1) state the grounds and provisions of the order, including the factual basis for its issuance;
- (2) refer the person to appropriate health care facilities where the person can be tested for reportable diseases, including HIV infection; and
- (3) inform the person who is subject to the order of that person's right to refuse to be tested and the authority of the department or health authority to ask for a court order requiring the test.

(f) If the person who is subject to the order refuses to comply, the prosecuting attorney who represents the state in district court, on request of the department or the department's designee, shall petition the district court for a hearing on the order. The person who is subject to the order has the right to an attorney at the hearing, and the court shall appoint an attorney for a person who cannot afford legal representation. The person may not waive the right to an attorney unless the person has consulted with an attorney.

(g) In reviewing the order, the court shall determine whether exposure occurred and whether that exposure presents a possible risk of infection as defined by board rule. The attorney for the state and the attorney for the person subject to the order may introduce evidence at the hearing in support of or opposition to the testing of the person. On conclusion of the hearing, the court shall either issue an appropriate order requiring counseling and testing of the person for reportable diseases, including HIV infection, or refuse to issue the order if the court has determined that the counseling and testing of the person is unnecessary. The court may assess court costs against the person who requested the test if the court finds that there was not reasonable cause for the request.

(h) The department or the department's designee shall inform the person who requested the order of the results of the test. If the person subject to the order is found to have a reportable disease, the department or the department's designee shall inform that person and the person who requested the order of the need for medical follow-up and counseling services. The department or the department's designee shall develop protocols for coding test specimens to ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete.

(i) HIV counseling and testing conducted under this section must conform to the model protocol on HIV counseling and testing prescribed by the department.

(j) For the purpose of qualifying for workers' compensation or any other similar benefits for compensation, an employee who claims a possible work-related exposure to a reportable disease, including HIV infection, must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease, including HIV infection.

(k) A person listed in Subsection (b) who may have been exposed to a reportable disease, including HIV infection, may not be required to be tested.

(l) In this section "HIV" and "test result" have the meanings assigned by Section 81.101.

§ 81.095. Testing for Accidental Exposure

(a) In a case of accidental exposure of a health care worker to blood or other body fluids of a patient in a licensed hospital, the hospital, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B or hepatitis C. A test conducted under this section may be performed without the patient's specific consent.

(b) This subsection applies only in a case of accidental exposure of certified emergency medical services personnel, a firefighter, a peace officer, or a first responder who renders assistance at the scene of an emergency or during transport to the hospital to blood or other body fluids of a patient who is transported to a licensed hospital. The hospital receiving the patient, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B or hepatitis C if the report shows there is significant risk to the person exposed. The organization that employs the person or for which the person works as a volunteer in connection with rendering the assistance is responsible for paying the costs of the test. The hospital shall provide the test results to the department or to the local health authority, which are responsible for following the procedures prescribed by Section 81.050(h) to inform the person exposed and, if applicable, the patient regarding the test results. The hospital shall follow applicable reporting requirements prescribed by Subchapter C. This subsection does not impose a duty on a hospital to provide any further testing, treatment, or services or to perform further procedures.

(c) The facility shall have a policy concerning the disclosure of the result of the testing as authorized or required by law.

(d) The facility shall abide by all patient confidentiality standards as set out in Section 81.046.

GOVERNMENT CODE

CHAPTER 417. STATE FIRE MARSHAL

Sec. 417.001.	Definitions
Sec. 417.002.	Appointment and Tenure
Sec. 417.003.	Status as State-Commissioned Officer
Sec. 417.004.	General Powers and Duties
Sec. 417.005.	Adoption of Rules
Sec. 417.0051.	Fire Prevention and Safety Education
Sec. 417.0052.	Texas Fire Incident Reporting System
Sec. 417.006.	Fire and Arson Investigators
Sec. 417.007.	Investigation of Fire
Sec. 417.0075.	Investigation of Firefighter Fatality.
Sec. 417.008.	Right of Entry; Examination and Correction of Dangerous Conditions
Sec. 417.0081.	Inspection of Certain State-Owned Buildings
Sec. 417.0082.	Protection of Certain State-Owned Buildings Against Fire Hazards
Sec. 417.0083.	Fire Suppression Ratings Schedule
Sec. 417.009.	Delegation of Authority
Sec. 417.010.	Alternate Remedies

§ 417.001. Definitions

In this chapter:

- (1) "Commissioner" means the commissioner of insurance.
- (2) "Department" means the Texas Department of Insurance.

§ 417.002. Appointment and Tenure

The state fire marshal is appointed by the commissioner. The state fire marshal serves at the pleasure of the commissioner and may be discharged at any time. The state fire marshal shall report to the commissioner.

§ 417.003. Status as State-Commissioned Officer

The state fire marshal is a state-commissioned officer and functions in that capacity subject to rules of the commissioner.

§ 417.004. General Powers and Duties

(a) The state fire marshal, under the supervision of the commissioner, shall administer and enforce applicable provisions of the Insurance Code and other law relating to the state fire marshal. The commissioner shall perform the supervisory and rule-making functions previously performed by the Texas Commission on Fire Protection under this subsection. The commissioner and the commission shall transfer information between the two agencies as necessary to allow the agencies to perform their statutory duties. The commissioner and the commission may make and adopt by rule memoranda of understanding as necessary to coordinate their respective duties.

(b) The state fire marshal is the chief investigator in charge of the investigation of arson and suspected arson in the state.

(c) The state fire marshal may make or encourage studies of fire protection, including fire administration.

(d) The state fire marshal may conduct research to improve fire protection and fire administration and may stimulate research by public and private agencies for that purpose.

(e) The state fire marshal may, on the request of a public or nonprofit entity with duties related to fire protection, advise or assist the entity in relation to those duties.

§ 417.005. Adoption of Rules

The commissioner, after consulting with the state fire marshal, may adopt necessary rules to guide the state fire marshal and fire and arson investigators commissioned by the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner.

§ 417.0051. Fire Prevention and Safety Education

The commissioner, through the state fire marshal, may use pertinent and timely facts relating to fires to develop educational programs and disseminate materials necessary to educate the public effectively regarding methods of fire prevention and safety.

§ 417.0052. Texas Fire Incident Reporting System

The state fire marshal, under the direction of the commissioner, is responsible for maintaining and administering the Texas Fire Incident Reporting System.

§ 417.006. Fire and Arson Investigators

The state fire marshal may commission peace officers to act as fire and arson investigators under his supervision and to perform other law enforcement duties assigned to the commissioner and the state fire marshal by law. The state fire marshal may revoke a peace officer's commission under this section for just cause.

§ 417.007. Investigation of Fire

(a) The state fire marshal shall immediately investigate a fire occurring in this state in which property is destroyed if the commissioner directs the investigation or, in the discretion of the commissioner, if the investigation is requested by:

- (1) the mayor, fire chief, fire marshal, or police chief of a municipality in which a fire occurs;
- (2) a county or district judge, sheriff, county fire marshal, chief or fire marshal of a fire department in an unincorporated area, or county attorney of a county in which a fire occurs;
- (3) a fire insurance company interested in a loss or the company's general, state, or special agent;
- (4) an insurance policyholder, property owner, or lessee sustaining a fire loss;
- (5) a justice of the peace or a constable of a precinct in which a fire occurs; or
- (6) officials of a state or federal law enforcement agency or local or special governmental district involved or interested in a fire loss that occurred in this state.

(b) The state fire marshal at any time may enter a building or premises at which a fire is in progress or has occurred and is under control of law enforcement or fire service officials to investigate the cause, origin, and circumstances of the fire. If control of the building or premises has been relinquished, entry must be in compliance with search and seizure law and applicable federal law.

(c) The state fire marshal shall conduct the investigation at the place of the fire and before an insured loss may be paid. The state fire marshal shall ascertain, if possible, whether the fire was caused intentionally, carelessly, or accidentally. The state fire marshal shall make a written report of the investigation to the commissioner.

(d) If the state fire marshal believes that further investigation is necessary, the state fire marshal shall take sworn statements from persons who in his opinion can supply relevant information and shall have the statements put in writing. The state fire marshal may administer oaths and compel

the attendance of witnesses and the production of documents.

(e) If the state fire marshal believes that there is sufficient evidence to charge a person with arson, attempted arson, conspiracy to commit fraud, or another offense related to the matter under investigation, the state fire marshal shall give to the appropriate prosecuting attorney all evidence and relevant information that has been obtained, including the names of witnesses. The state fire marshal shall arrest the person if the person has not been arrested by some other authority. The state fire marshal shall assist in the prosecution of any complaint he files.

(f) The state fire marshal may, in his discretion, conduct or direct the conduct of an investigation in private and may exclude from the place of the investigation persons not needed for the investigation. Witnesses may be separated from each other and not be allowed to communicate with other witnesses until after they have testified.

(g) The state fire marshal may elect to withhold from the public any testimony taken in an investigation under this section.

§ 417.0075. Investigation of Firefighter Fatality.

(a) In this section, the term "firefighter" includes an individual who performs fire suppression duties for a governmental entity or volunteer fire department.

(b) If a firefighter dies in the line of duty in connection with a fire-fighting incident in this state, the state fire marshal shall investigate the circumstances surrounding the death of the firefighter, including the cause and origin of the fire, the condition of the structure, and the suppression operation, to determine the factors that may have contributed to the death of the firefighter.

(c) In conducting an investigation under this section, the state fire marshal has the same powers as those granted to the state fire marshal under Section 417.007. The state fire marshal shall coordinate the investigative efforts of local government officials and may enlist established fire service organizations and private entities to assist in the investigation.

(d) The state fire marshal shall release a report concerning an investigation conducted under this section on completion of the investigation.

(e) Not later than October 31 of each year, the state fire marshal shall deliver to the commissioner a detailed report about the findings of each investigation conducted under this section in the preceding year.

(f) Information gathered in an investigation conducted under this section is subject to Section 552.108.

(g) The authority granted to the state fire marshal under this section shall not limit in any way the authority of the county or municipal fire marshal to conduct the county or municipal fire marshal's own investigation into the death of a firefighter within the county or municipal fire marshal's jurisdiction.

§ 417.008. Right of Entry; Examination and Correction of Dangerous Conditions

(a) On the complaint of any person, the state fire marshal, at any reasonable time, is entitled to enter any building or premises in the state.

(b) The state fire marshal shall enter and is entitled, at any time, to enter any mercantile, manufacturing, or public building, place of amusement, or place where public gatherings are held, or any premises belonging to such a building or place, and make a thorough examination.

(c) The state fire marshal shall order the removal of a building or structure or other remedial action if he finds that:

(1) the building or other structure, because of lack of repair, age, dilapidated condition, or other reason, is susceptible to fire and is so located or occupied that fire would endanger persons or property in the building or structure;

(2) a dangerous condition is created by:

(A) an improper arrangement of stoves, ranges, furnaces, or other heating appliances, including chimneys, flues, and pipes with which they are connected, or by their lighting systems or devices; or

(B) the manner of storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, or combustible, flammable, or refuse materials; or

(3) any other condition exists that is dangerous or is liable to cause or promote fire or create danger for fire fighters, occupants, or other buildings or structures.

(d) The occupant or owner of the building or premises shall immediately comply with an order made by the state fire marshal under this section. The state fire marshal may, if necessary, apply to a court of competent jurisdiction for writs or orders necessary to enforce this section, and the court may grant appropriate relief. The state fire marshal is not required to give a bond.

(e) The commissioner may adopt by rule any appropriate standard developed by a nationally recognized standards-making association under which the state fire marshal may enforce this section, except that standards adopted by rule under this subsection do not apply in a geographic area under the jurisdiction of a local government that has adopted fire protection ordinances that apply in the geographic area.

§ 417.0081. Inspection of Certain State-Owned Buildings

The state fire marshal, at the commissioner's direction, shall periodically inspect public buildings under the charge and control of the General Services Commission.

§ 417.0082. Protection of Certain State-Owned Buildings Against Fire Hazards

(a) The state fire marshal, under the direction of the commissioner, shall take any action necessary to protect a public building under the charge and control of the General Services Commission, and the building's occupants, against an existing or threatened fire hazard.

(b) The commissioner and the General Services Commission shall make and each adopt by rule a memorandum of understanding that coordinates the agency's duties under this section.

§ 417.0083. Fire Suppression Ratings Schedule

(a) The state fire marshal shall perform duties as directed by the commissioner relating to the department's fire suppression ratings schedule.

(b) The state fire marshal may provide technical assistance to paid fire departments, volunteer fire departments, and local governments responding to the use of the fire suppression ratings schedule.

§ 417.009. Delegation of Authority

(a) If for any reason the state fire marshal is unable to make a required investigation in person, the marshal may designate the fire marshal of the city or town where the investigation is to be made or another suitable person to act for the state fire marshal.

(b) The designated person has the same authority with respect to the investigation as is provided by this chapter for the state fire marshal. The designated person is entitled to compensation as provided by the commissioner.

§ 417.010. Alternate Remedies

The state fire marshal, in the enforcement of a law that is enforced by or through the state fire marshal, may in lieu of canceling, revoking, or suspending a license or certificate of registration impose on the holder of the license or certificate of registration an order directing the holder to do one or more of the following:

- (1) cease and desist from a specified activity;
- (2) remit to the commissioner within a specified time a monetary forfeiture not to exceed \$10,000 for each violation of an applicable law or rule; and
- (3) make restitution to a person harmed by the holder's violation of an applicable law or rule.

CHAPTER 419. TEXAS COMMISSION ON FIRE PROTECTION

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 419.001. Definitions
- Sec. 419.002. Commission
- Sec. 419.003. Sunset Provision
- Sec. 419.004. Composition of Commission
- Sec. 419.005. Removal of Commission Members
- Sec. 419.006. Conflict of Interest
- Sec. 419.007. Officers; Compensation; Meetings
- Sec. 419.0071. Commission Member Training
- Sec. 419.008. General Powers and Duties
- Sec. 419.0082. Rulemaking
- Sec. 419.009. Personnel
- Sec. 419.0091. General Counsel
- Sec. 419.010. Fiscal Report
- Sec. 419.011. Public Interest Information and Complaints

SUBCHAPTER B. REGULATING AND ASSISTING FIRE FIGHTERS AND FIRE DEPARTMENTS

- Sec. 419.021. Definitions
- Sec. 419.022. General Powers Relating to This Subchapter
- Sec. 419.0225. Certain Rules Prohibited
- Sec. 419.023. Fire Fighter Advisory Committee
- Sec. 419.024. Local Government Powers
- Sec. 419.025. Manual
- Sec. 419.026. Fees for Certificates
- Sec. 419.027. Biennial Inspections
- Sec. 419.028. Training Programs and Instructors
- Sec. 419.029. Training Curriculum
- Sec. 419.030. Cooperation With Other Entities for Training Purposes
- Sec. 419.031. Training Assistance
- Sec. 419.032. Appointment of Fire Protection Personnel
- Sec. 419.0321. Part-Time Fire Protection Employees
- Sec. 419.0322. Categories and Designation of Persons Performing Fire Protection Duties
- Sec. 419.033. Certificate Expiration
- Sec. 419.034. Certificate Renewal
- Sec. 419.0341. Individual Certificate Holder; Certificate Renewal
- Sec. 419.035. Certification Examinations
- Sec. 419.036. Disciplinary Actions
- Sec. 419.0365. Disciplinary Hearing
- Sec. 419.037. Appointment as Marine Fire Protection Personnel
- Sec. 419.038. Appointment to Aircraft Fire Fighting and Rescue Fire Protection Personnel Position

- Sec. 419.039. Criminal Penalty
- Sec. 419.040. Protective Clothing
- Sec. 419.041. Self-Contained Breathing Apparatus
- Sec. 419.042. Personal Alert Safety Systems
- Sec. 419.043. Applicable National Fire Protection Association Standard
- Sec. 419.044. Incident Management System
- Sec. 419.045. Personnel Accountability System
- Sec. 419.046. Fire Protection Personnel Operating at Emergency Incidents
- Sec. 419.047. Commission Enforcement

SUBCHAPTER C. FIRE DEPARTMENT EMERGENCY PROGRAM

- Sec. 419.051. Definitions
- Sec. 419.052. Purpose
- Sec. 419.053. General Powers and Duties of Commission Under This Subchapter
- Sec. 419.054. Funds Allocation Advisory Committee
- Sec. 419.055. Creation of Program
- Sec. 419.056. Loans or Other Financial Assistance for Equipment and Facilities
- Sec. 419.057. Revolving Fund
- Sec. 419.058. Scholarships and Grants for Education and Training
- Sec. 419.059. Application for Scholarship, Grant, Loan, or Other Financial Assistance
- Sec. 419.060. Review of Application
- Sec. 419.061. Approval or Rejection of Application
- Sec. 419.062. Contracts, Agreements, and Other Documents
- Sec. 419.063. Limitation on Scholarships, Grants, Loans, and Other Financial Assistance;
Use of Appropriated Funds
- Sec. 419.064. Default on Loan

SUBCHAPTER D. VOLUNTEER FIRE FIGHTERS AND FIRE DEPARTMENTS

- Sec. 419.071. Voluntary Certification Program for Volunteer Fire Fighters and Fire Departments
- Sec. 419.072. Obtaining Paid Employment as Fire Fighter
- Sec. 419.073. Individual Certificate Holder; Certificate Renewal

SUBCHAPTER E. PAID FIRE FIGHTERS AND FIRE DEPARTMENTS NOT CONNECTED WITH A LOCAL GOVERNMENT

- Sec. 419.081. Mandatory Inspection and Regulation of Certain State Agencies
- Sec. 419.082. Training for State Agency Fire Fighters
- Sec. 419.083. Voluntary Regulation of Certain State Officials, State Agencies, and State Agency Employees
- Sec. 419.084. Voluntary Regulation of Certain Federal Agencies and Federal Fire Fighters
- Sec. 419.085. Voluntary Regulation of Certain Nongovernmental Departments
- Sec. 419.086. Eligibility For Certain Training Assistance
- Sec. 419.087. Mandatory Regulation of Certain Nongovernmental Organizations and Personnel

SUBCHAPTER F. REVIEW OF FIRE DEPARTMENT TESTS

- Sec. 419.101. Applicability
- Sec. 419.102. Review of Tests
- Sec. 419.103. Discrimination Prohibited, Disparate Impact

- Sec. 419.104. Violation, Recommendation of Commission on Human Rights
- Sec. 419.105. Authority to Administer Test

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

- Sec. 419.902. Coordination With Firemen's Training School
- Sec. 419.903. Coordination With Texas Forest Service
- Sec. 419.904. Technical Assistance to Rural Fire Prevention Districts
- Sec. 419.905. Appeal of Commission Decisions
- Sec. 419.906. Administrative and Civil Penalties; Injunction
- Sec. 419.907. Location of Offices of Commission, State Fire Marshal, and Texas Forest Service

SUBCHAPTER A. GENERAL PROVISIONS

§ 419.001. Definitions

In this chapter:

- (1) "Commission" means the Texas Commission on Fire Protection.
- (2) "Volunteer fire fighter" and "volunteer fire chief" do not include a person who is also employed full-time in the fire service.

§ 419.002. Commission

The Texas Commission on Fire Protection is an agency of the state.

§ 419.003. Sunset Provision

The Texas Commission on Fire Protection is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2009.

§ 419.004. Composition of Commission

(a) The commission is composed of the following 13 members:

(1) two members to be selected from a list of five names submitted by the Texas Fire Chiefs Association who are chief officers with a minimum rank that is equivalent to the position immediately below that of the fire chief and who are employed in fire departments as defined by Section 419.021 that are under the jurisdiction of the commission, at least one of whom must be the head of a fire department and one of whom must be employed by a political subdivision with a population of less than 50,000;

(2) two members to be selected from a list of five names submitted by the Texas State Association of Fire Fighters who are fire protection personnel as defined by Section 419.021 with the rank of battalion chief or below and who are employed in fire departments or other appropriate local authorities under the jurisdiction of the commission, one of whom must be employed by a political subdivision with a population of less than 50,000;

(3) two members to be selected from a list of five names submitted by the State Firemen's and Fire Marshals' Association of Texas who are volunteer fire chiefs or volunteer fire fighters;

(4) one certified fire protection engineer;

(5) one certified arson investigator or certified fire protection inspector;

(6) one fire protection instructor from an institution of higher education as defined by Section 61.003, Education Code; and

(7) four public members.

(b) The members of the commission are appointed by the governor with the advice and consent

of the senate for staggered terms of six years with four or five members' terms expiring February 1 of each odd-numbered year.

(c) The duties of a public officer or employee on the commission constitute additional duties of the member's office or employment.

(d) Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

(e) A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by the commission;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission;

(4) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or

(5) is a member of a paid or volunteer fire department.

§ 419.005. Removal of Commission Members

(a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required by Section 419.004;

(2) does not maintain during service on the commission the qualifications required by Section 419.004;

(3) violates a prohibition established by Section 419.006;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

§ 419.006. Conflict of Interest

(a) An officer, employee, or paid consultant of a Texas trade association in the field of fire protection may not be a member of the commission or an employee of the commission who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of fire protection may not be a commission member and may not be a commission employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(d) A person may not serve as a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

§ 419.007. Officers; Compensation; Meetings

(a) The fire protection instructor appointed under Section 419.004(a)(6) serves as the presiding officer of the commission unless the governor designates another member as presiding officer. The commission shall elect from among its members an assistant presiding officer and a secretary.

(b) The commission shall meet at least quarterly.

(c) A member of the commission may not receive compensation for service on the commission. A member is entitled to receive reimbursement, subject to any applicable limitation on reimbursement provided by the General Appropriations Act, for actual and necessary expenses incurred in performing services as a member of the commission.

(d) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

§ 419.0071. Commission Member Training

(a) To be eligible to take office as a member of the commission, a person appointed to the commission must complete at least one course of a training program that complies with this section.

(b) The training program must provide information to the person regarding:

(1) the enabling legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of the most recent formal audit of the commission;

(7) the requirements of the:

(A) open meetings law, Chapter 551;

(B) open records law, Chapter 552; and

(C) administrative procedure law, Chapter 2001;

(8) the requirements of the conflict of interests laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the agency or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act and as if the person were a member of the commission.

§ 419.008. General Powers and Duties

(a) The commission may adopt rules for its internal management and control and for the administration of its powers and duties.

(b) The commission shall perform the duties assigned to the commission under this chapter or other law.

(c) The commission shall perform duties assigned by law to the Commission on Fire Protection Personnel Standards and Education or to the Fire Department Emergency Board.

(d) The commission may accept gifts, grants, and contributions from private individuals or foundations and from the federal government.

(e) The commission shall report to the governor annually and to the legislature at each regular session on the commission's activities. The commission may make recommendations in those reports on matters under its jurisdiction. The commission may make other reports in its discretion.

(f) The commission may appoint advisory committees to assist it in the performance of its duties. A member of an advisory committee appointed by the commission or otherwise appointed under this chapter may not receive compensation for service on the advisory committee. A member appointed under this chapter is entitled to receive reimbursement, subject to any applicable limitation on reimbursement provided by the General Appropriations Act, for actual and necessary expenses incurred in performing services as a member of the advisory committee.

§ 419.0082. Rulemaking

(a) In adopting or amending a rule under Section 419.008(a) or any other law, the commission shall seek the input of the fire fighter advisory committee and, when appropriate, the funds allocation advisory committee. The commission shall permit the appropriate advisory committee to review and comment on any proposed rule, including a proposed amendment to a rule, before the rule is adopted.

(b) The commission may not adopt a rule, including an amendment to a rule, before the commission meeting held after the commission meeting at which the rule is first proposed.

(c) This section does not apply to an emergency rule adopted under Section 2001.034.

(d) Notwithstanding other provisions of this section, the commission may, without review by an advisory committee, make nonsubstantive clerical changes to a rule.

§ 419.009. Personnel

(a) The commission shall employ an executive director who shall employ other personnel necessary for the performance of commission functions.

(b) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(c) The commission shall develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the commission.

(d) The executive director or the executive director's designee shall develop an intraagency career ladder program that addresses opportunities for mobility and advancement for employees within the commission. The program shall require intraagency postings of all positions concurrently with any public posting.

(e) The executive director or the executive director's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for commission employees must be based on the system established under this subsection.

(f) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the commission work force that meets federal and state laws, rules, regulations, and instructions directly adopted under those laws, rules, or regulations;

(3) procedures by which a determination can be made about the extent of underuse in the commission work force of all persons for whom federal or state laws, rules, regulations, and instructions directly adopted under those laws, rules, or regulations encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(g) A policy statement prepared under Subsection (f) must cover an annual period, be updated annually and reviewed by the Commission on Human Rights for compliance with Subsection (f)(1), and be filed with the governor's office.

(h) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (g). The report may be made separately or as a part of other biennial reports made to the legislature.

§ 419.0091. General Counsel

The commission may employ not more than one attorney. The attorney shall serve as general counsel of the commission.

§ 419.010. Fiscal Report

The commission shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must meet the reporting requirements applicable to financial reporting provided in the General Appropriations Act.

§ 419.011. Public Interest Information and Complaints

(a) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission shall keep a file about each written complaint filed with the commission that the commission has authority to resolve. The commission shall provide to the person filing the complaint and the persons or entities complained about the commission's policies and procedures pertaining to complaint investigation and resolution. The commission, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and the persons or entities complained about of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The commission shall keep information about each complaint filed with the commission. The information shall include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all persons contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for complaints for which the agency took no action, an explanation of the reason the complaint was closed without action.

(d) The commission shall comply with federal and state laws related to program and facility accessibility. The executive director shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the commission's programs.

SUBCHAPTER B. REGULATING AND ASSISTING FIRE FIGHTERS AND FIRE DEPARTMENTS

§ 419.021. Definitions

In this subchapter:

(1) "Aircraft rescue and fire protection personnel" means permanent, full-time local governmental employees who, as a permanent duty assignment, fight aircraft fires at airports, stand by for potential crash landings, and perform aircraft crash rescue.

(2) "Fire department" means a department of a local government that is staffed by permanent, full-time employees of the local government and that is organized to prevent or suppress fires.

(3) "Fire protection personnel" means:

(A) permanent, full-time law enforcement officers designated as fire and arson investigators by an appropriate local authority;

(B) aircraft rescue and fire protection personnel; or

(C) permanent, full-time fire department employees who are not secretaries, stenographers, clerks, budget analysts, or similar support staff persons or other administrative employees and who are assigned duties in one or more of the following categories:

(i) fire suppression;

(ii) fire inspection;

(iii) fire and arson investigation;

(iv) marine fire fighting;

(v) aircraft rescue and fire fighting;

(vi) fire training;

(vii) fire education;

(viii) fire administration; and

(ix) any other position necessarily or customarily related to fire prevention or suppression.

(4) "Local government" means a municipality, a county, a special-purpose district or authority, or any other political subdivision of the state.

(5) "Marine fire protection personnel" means permanent, full-time local governmental employees who work aboard a fireboat and fight fires that occur on or adjacent to a waterway, waterfront, channel, or turning basin.

(6) "Protective clothing" means garments, including turnout coats, bunker coats, bunker pants, boots, gloves, trousers, helmets, and protective hoods, worn by fire protection personnel in the course of performing fire-fighting operations, including wildland fire suppression.

(7) A Structure fire protection personnel means permanent, full-time local government employees who engage in fire fighting activities involving structures and may perform other emergency activities typically associated with fire fighting duties, such as rescue, emergency medical response, confined space rescue, hazardous materials response, and wildland fire fighting.

§ 419.022. General Powers Relating to This Subchapter

(a) The commission may:

(1) require the submission of reports and information by a local governmental agency in this state that employs fire protection personnel;

(2) assist fire departments and fire protection personnel with problems related to fire-fighting techniques, clothing, and equipment;

(3) assist fire departments and local governments with the development and updating of local fire codes;

(4) on request, assist in performing staffing studies of fire departments; and

(5) establish minimum educational, training, physical, and mental standards for admission to

employment as fire protection personnel in a permanent, temporary, or probationary status and for advanced or specialized fire protection personnel positions.

(b) The commission may not change a minimum standard under Subsection (a)(5) to a standard that is less stringent than the applicable standard set by the Commission on Fire Protection Personnel Standards and Education in rules that were in effect on August 31, 1991.

§ 419.0225. Certain Rules Prohibited

(a) The commission may not adopt rules restricting competitive bidding or advertising by a certificate holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the commission may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a certificate holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the certificate holder; or

(4) restricts the certificate holder's advertisement under a trade name.

§ 419.023. Fire Fighter Advisory Committee

(a) The commission shall establish a fire fighter advisory committee to assist the commission in matters relating to fire protection personnel, volunteer fire fighters, fire departments, and volunteer fire departments. The committee shall be composed of nine members appointed by the commission.

(b) Six members of the committee must be fire protection personnel or retired fire protection personnel who collectively represent various areas in the field of fire protection. Three members of the committee must be certified instructors of fire protection personnel. At least one member of the committee must be a volunteer fire fighter or volunteer fire chief.

(c) A committee member serves at the will of the commission.

(d) The committee shall elect a member of the committee as the presiding officer of the committee. The committee shall meet at least twice each calendar year at the call of the presiding officer or at the call of the commission.

(e) The committee periodically shall review commission rules relating to fire protection personnel, fire departments, and other fire fighters and fire fighting organizations that are subject to regulation under this subchapter and recommend changes in the rules to the commission.

§ 419.024. Local Government Powers

Except as expressly provided by this chapter, this subchapter does not limit the powers, rights, duties, or responsibilities of a local government and does not affect Chapter 143, Local Government Code.

§ 419.025. Manual

The commission shall set and collect a fee for a manual that states rules and minimum standards for fire protection personnel. The amount of the fee may not exceed the cost of preparing, printing, and distributing the manual.

§ 419.026. Fees for Certificates

(a) The commission shall set and collect a fee of not more than \$35 for each certificate that the commission issues or renews under this subchapter, except that if a person holds more than one certificate the commission may collect only one fee each year for the renewal of those certificates. The employing agency or entity shall pay this fee as provided by commission rule. The certificate

must be renewed annually.

(b) The commission shall set and collect a fee for each examination given to fire protection personnel for basic certification under this subchapter. The amount of the fee may not exceed the cost of preparing, printing, administering, and grading the examination.

(c) The commission may revoke, refuse to issue, or refuse to renew the certificate of fire protection personnel for failure to pay a fee required under Subsection (a).

(d) The commission shall send the fees authorized by Subsection (a) and Section 419.033(b) to the comptroller, who shall deposit 50 percent of the fees collected annually into the general revenue fund and 50 percent of the fees collected annually into a special account in the general revenue fund dedicated for use by the commission. Except as otherwise provided by this chapter, 50 percent of the special fund created under this subsection may be used only to defray the commission's costs in performing inspections under Section 419.027 and the other 50 percent may be used only to provide training assistance under Section 419.031.

§ 419.027. Biennial Inspections

At least biennially, the commission shall visit and inspect each institution or facility conducting courses for training fire protection personnel and recruits, each fire department, and each local governmental agency providing fire protection to determine if the department, agency, institution, or facility is complying with this chapter and commission rules.

§ 419.028. Training Programs and Instructors

The commission may:

(1) authorize reimbursement for a local governmental agency for expenses in attending training programs as authorized by the legislature;

(2) through issuance or revocation of a certificate, approve or revoke the approval of an institution or facility for a school operated by or for this state or a local government specifically for training fire protection personnel or recruits;

(3) certify persons as qualified fire protection personnel instructors under conditions that the commission prescribes;

(4) contract with persons or public or private agencies, as the commission considers necessary, for studies and reports that the commission requires to cooperate with local governmental agencies in training programs and to otherwise perform its functions;

(5) revoke the certification of fire protection personnel instructors; and

(6) provide staff or educational materials on request to training programs or fire departments.

§ 419.029. Training Curriculum

The commission may establish minimum curriculum requirements for preparatory, in-service, and advanced courses and programs for a school operated by or for this state or a local government specifically for training fire protection personnel or recruits.

§ 419.030. Cooperation With Other Entities for Training Purposes

The commission may consult and cooperate with a local governmental agency, other governmental agency, university, college, junior college, or another institution concerning the development of training schools and programs of courses of instruction for fire protection personnel, including the preparation or implementation of continuing education or training programs.

§ 419.031. Training Assistance

The commission shall adopt rules and procedures for the administration of a training assistance program under this subchapter. The training assistance provided to fire departments under this

subchapter may be provided by any of the following methods:

- (1) purchasing and providing training aids to fire departments on a temporary or permanent basis;
- (2) financing training seminars for fire departments; or
- (3) paying instructor fees to teach specialized courses for fire departments that employ fully paid fire protection personnel.

§ 419.032. Appointment of Fire Protection Personnel

(a) A fire department may not appoint a person to the fire department, except on a temporary or probationary basis, unless the person:

(1) has satisfactorily completed a preparatory program of training in fire protection at a school approved by the commission; and

(2) meets the qualifications established by the commission under Subsection (b).

(b) The commission by rule may establish qualifications relating to minimum age, education, physical and mental condition, citizenship, basic certification tests, continuing education or training programs, and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel. The commission shall prescribe the means of presenting evidence of fulfillment of these qualifications. This chapter does not preclude an employing agency from establishing qualifications and standards for hiring fire protection personnel that exceed the minimum qualifications set by the commission.

(c) Fire protection personnel who receive temporary or probationary appointment and who fail to satisfactorily complete a basic course in fire protection, as prescribed by the commission, before one year after the date of the original appointment forfeit, and shall be removed from, the position. A temporary or probationary appointment may not be extended beyond one year by renewal of appointment or otherwise, except that on petition of a fire department one year or more after the date of the forfeiture and removal, the commission may reinstate the person's temporary or probationary employment. Fire protection personnel must complete a commission-approved training course in fire suppression before being assigned full-time to fire suppression duties. The commission may, on application by a fire department and after receiving the comments and advice of the fire fighter advisory committee, extend from one year to a period not to exceed two years the time allowed for fire protection personnel receiving a temporary or probationary appointment to successfully complete a basic course in fire protection.

(d) The commission may certify persons who are qualified under this subchapter to be fire protection personnel. The commission shall adopt rules relating to presentation of evidence of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by the commission for approved fire protection education and training programs in this state and shall issue to a person meeting the rules a certificate evidencing satisfaction of Subsections (a) and (b). The commission may waive any certification requirement for an applicant with a valid license from another state having certification requirements substantially equivalent to those of this state.

(e) Fire protection personnel serving under permanent appointment before September 1, 1972, are not required to meet a requirement of Subsection (a) or (b) as a condition of tenure or continued employment or for eligibility for a promotional examination for which they are otherwise eligible. The fire protection personnel are eligible to attend training courses subject to commission rules.

(f) A local government may appoint a person to the position of head of the fire department, though the person is not certified by the commission as fire protection personnel, if the person either has at least 10 years' experience as a volunteer fire fighter or may be eligible to become certified under the provisions of Subsection (d) relating to other states or jurisdictions. The appointment is on a temporary basis pending certification of the person as fire protection personnel

by the commission under this subsection. The temporary appointment may not be extended beyond one year by renewal of appointment or otherwise. In addition to rules adopted under Subsection (d) relating to other states or jurisdictions, the commission shall adopt rules for purposes of this subsection relating to presentation of evidence that a person has been a volunteer fire fighter for the required period. The rules may not include more stringent requirements on the nature of the volunteer fire departments with which a person may accumulate the required period of volunteer service than the requirements contained in the definition of an organized volunteer fire department under Chapter 615. The commission shall certify as fire protection personnel a person who is serving as a temporarily appointed department head under this subsection and who:

(1) presents satisfactory evidence that the person has been a volunteer fire fighter for at least 10 years and passes the commission's basic certification examination administered under this subchapter on the first or second attempt;

(2) presents satisfactory evidence that the person is eligible to be certified as fire protection personnel under Subsection (d) and passes the commission's basic certification examination administered under this subchapter on the first or second attempt; or

(3) satisfies the requirements of Subsections (a) and (b).

(g) This chapter does not prevent a fire department from assigning volunteer fire fighters, or other auxiliary fire fighters who are not fire protection personnel, to fire suppression, fire education, or fire station duties.

(h) This chapter does not prevent an employee of a local government from being a volunteer fire fighter.

§ 419.0321. Part-Time Fire Protection Employees

(a) A fire department may employ part-time fire protection employees under this section. The commission shall create a separate certification class for part-time fire protection employees.

(b) To become certified as a part-time fire protection employee, a person must:

(1) satisfy the requirements of Sections 419.032(a) and (b) or Section 419.032(d) for certification as fire protection personnel; and

(2) be employed by a fire department as a temporary or probationary part-time fire protection employee.

(c) A fire department may not employ a person as a part-time fire protection employee, except on a temporary or probationary basis, unless the person has been certified by the commission as a part-time fire protection employee. A temporary or probationary employment may not extend beyond one year or be renewed, except that on petition of a fire department one year or more after the date that a temporary or probationary part-time employment expires, the commission may reinstate the person's temporary or probationary part-time employment.

(d) A person who is certified as a part-time fire protection employee and a fire department or local government that employs a part-time fire protection employee are subject to this subchapter and applicable commission rules to the same extent that this subchapter and applicable commission rules apply to certified fire protection personnel and to a fire department or local government in the employment of fire protection personnel.

(e) A part-time fire protection employee may not:

(1) work more than 24 hours a week or average more than approximately 24 hours a week during a work cycle, as appropriate, for an employing fire department; or

(2) work more than 500 hours a year for an employing fire department in duties related to fire suppression.

(f) A part-time fire protection employee may work, on a temporary basis only, in place of a person who is fire protection personnel who is absent from work because of vacation, illness, injury, or administrative leave. Work may not be assigned under this subsection in a manner that will

cause a reduction in the number of authorized full-time positions in a fire department. Hours worked under this subsection are not counted when computing hours under Subsection (e)(1).

§ 419.0322. Categories and Designation of Persons Performing Fire Protection Duties

(a) Each person who is assigned by a fire department to perform one or more duties listed under Section 419.021(3)(C) must be:

- (1) fire protection personnel;
- (2) a part-time fire protection employee; or
- (3) a volunteer or other auxiliary fire fighter.

(b) Each fire department shall designate each person who is assigned by the department to perform one or more duties listed under Section 419.021(3)(C) as fire protection personnel, a part-time fire protection employee, or a volunteer or auxiliary fire fighter, but a department may not designate the same person under more than one category under this section. The designation shall be made on the records of the department and the designation shall be made available for inspection by the commission or sent to the commission on request.

(c) A fire department may not compensate, reimburse, or provide benefits to a person the department has designated as a volunteer or other auxiliary fire fighter to the extent that the person would be considered fully paid fire protection personnel.

(d) A person designated as a part-time fire protection employee under this section is subject to Section 419.0321.

§ 419.033. Certificate Expiration

(a) The commission by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the certificate expiration date is changed, certificate fees payable on the date set by commission rule shall be prorated on a monthly basis so that each fire department or other employing entity shall pay only that portion of the certificate fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

(b) The commission shall issue to a person who has held a commission certificate but is no longer employed by an entity that is regulated by the commission a one-time certificate that states the level of certification held by the person on the date the person left the regulated entity's employment. The commission shall prescribe the procedure under which a person applies for a certificate under this subsection. The commission shall set and collect from the person a fee of not more than \$35 for the certificate.

§ 419.034. Certificate Renewal

(a) A fire department or other employing entity may renew an unexpired certification by paying to the commission before the expiration date of the certificate the required renewal fee.

(b) If a person's certificate has been expired for 30 days or less, the fire department or other employing entity may renew the certificate by paying to the commission the required renewal fee and a fee that is one-half of the certification fee for the certificate.

(c) If a person's certificate has been expired for longer than 30 days but less than one year, the fire department or other employing entity may renew the certificate by paying to the commission all unpaid renewal fees and a fee that is equal to the certification fee.

(d) If a person's certificate has been expired for one year or longer, the person may not renew the certificate. The person may obtain a new certificate by submitting to the proficiency examination or repeating the requirements and procedures for obtaining an original certificate. The commission shall charge a fee to recover the cost of administering the proficiency examination. The fire department or other employing entity shall pay the certification fee.

(e) Notwithstanding any other law, the commission by rule may establish a procedure to waive the late fees or examination required by this section if:

(1) the person's certificate expired because of the employing entity's good faith clerical error, including the failure of the employing entity to submit fees in a timely manner; or

(2) the person's certificate expired as a result of termination of the person's employment and the person has been restored to employment as a result of a disciplinary procedure or a court action.

(f) At least 30 days before the expiration of a person's certificate, the commission shall send written notice of the impending certificate expiration to the last known fire department or other employing entity employing the regulated person according to the records of the commission.

§ 419.0341. Individual Certificate Holder; Certificate Renewal

(a) Notwithstanding any other provision of this subchapter, a person may be certified as fire protection personnel and continue to hold and renew the certificate without regard to whether the person is employed or continues to be employed by a local authority or fire department.

(b) A person who is certified as fire protection personnel who is not employed by a local authority or fire department may renew an unexpired certificate before the expiration of the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission the required renewal fee.

(c) If the person's certificate has been expired for 30 days or less, the person may renew the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission the required renewal fee and a fee that is one-half of the certification fee for the certificate.

(d) If the person's certificate has been expired for longer than 30 days but less than one year, the person may renew the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission all unpaid renewal fees and a fee that is equal to the certification fee for the certificate.

(e) If the person's certificate has been expired for one year or longer, the person may not renew the certificate. The person may obtain a new certificate by submitting to the proficiency examination or repeating the requirements and procedures for obtaining an original certificate. The commission shall charge a fee to cover the cost of administering the proficiency examination.

(f) At least 30 days before the expiration of the certificate of a person who is not employed by a local authority or fire department, the commission shall send written notice of the impending certificate expiration to the last known address of the person according to the records of the commission.

(g) The commission shall establish by rule the procedures and requirements for evidence of compliance with this section.

(h) Notwithstanding any other law, the commission by rule may establish a procedure to waive the late fees or examination required by this section for a person whose certificate expired because of the person's good faith clerical error, including the person's failure to submit fees in a timely manner.

§ 419.035. Certification Examinations

(a) Not later than the 30th day after the date on which a certification examination is administered

under this subchapter, the commission shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commission shall notify examinees of the results of the examination not later than the 14th day after the date on which the commission receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify the examinee of the reason for the delay before the 90th day.

(b) If requested in writing by a person who fails an examination administered under this subchapter, the commission shall furnish the person with an analysis of the person's performance on the examination.

§ 419.036. Disciplinary Actions

(a) The commission may revoke or suspend a certificate, place on probation a person whose certificate has been suspended, or reprimand a regulated person for a violation of this subchapter or a rule of the commission. If a regulated person's suspension is probated, the commission may require the practitioner:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the commission; or

(3) to continue or renew professional education until the practitioner attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(b) If the commission proposes to suspend or revoke a person's certificate, the person is entitled to a hearing before the commission or a hearings officer appointed by the commission. The commission shall prescribe procedures by which all decisions to suspend or revoke are made by or are appealable to the commission.

§ 419.0365. Disciplinary Hearing

If the commission proposes to suspend, revoke, or refuse to renew a person's certificate, the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter 2001. Rules of practice adopted by the commission under Section 2001.004 applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

§ 419.037. Appointment as Marine Fire Protection Personnel

(a) The commission shall adopt requirements for certification of marine fire protection personnel. A person may not be appointed to a marine fire protection personnel position, except on a probationary basis, unless the person has completed the training prescribed by the commission.

(b) Marine fire protection personnel appointed on a probationary basis must complete the prescribed training before two years after the date of appointment.

(c) Marine fire protection personnel serving under permanent appointment with five or more years' service before September 1, 1978, have satisfied the training requirements by experience.

§ 419.038. Appointment to Aircraft Fire Fighting and Rescue Fire Protection Personnel Position

(a) The commission shall adopt requirements for certification of aircraft fire fighting and rescue fire protection personnel. A person may not be appointed to an aircraft fire fighting and rescue fire protection personnel position, except on a probationary basis, unless the person has completed the training prescribed by the commission.

(b) Aircraft fire fighting and rescue fire protection personnel appointed on a probationary basis

must complete the prescribed training before two years after the date of appointment.

(c) Aircraft fire fighting and rescue fire protection personnel serving under permanent appointment with two or more years' service before September 1, 1984, have satisfied the training requirements.

§ 419.039. Criminal Penalty

(a) A person commits an offense if the person:

- (1) accepts an appointment in violation of Section 419.032 or 419.037;
- (2) knowingly accepts an appointment in violation of Section 419.038;
- (3) appoints or retains a person in violation of Section 419.032; or
- (4) appoints a person in violation of Section 419.037 or 419.038.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000.

§ 419.040. Protective Clothing

(a) A fire department shall purchase, provide and maintain a complete ensemble of appropriate protective clothing for each of its fire protection personnel who would be exposed to hazardous conditions from fire or other emergencies or where the potential for such exposure exists.

(b) The protective clothing shall be suitable for the task that the individual is expected to perform and must comply with the minimum standards of the National Fire Protection Association or its successor.

(c) The fire department shall develop and maintain a standard operating procedure covering the proper use, selection, care, and maintenance of all of its protective clothing.

§ 419.041. Self-Contained Breathing Apparatus

(a) A fire department shall furnish with self-contained breathing apparatus all of its fire protection personnel who engage in operations where the personnel might encounter atmospheres that are immediately dangerous to life or health, where the potential for such exposure exists, or where the atmosphere is unknown.

(b) All self-contained breathing apparatus shall comply with the minimum standards of the National Fire Protection Association or its successor.

(c) A fire department shall develop and maintain a standard operating procedure covering the proper use, selection, care, and maintenance of all of its breathing apparatus.

(d) A fire department shall require each self-contained breathing apparatus used by the department to be inspected at least monthly. The inspection shall comply with the minimum standards of the National Fire Protection Association or its successor.

(e) A fire department shall require each self-contained breathing apparatus used by the department to be tested annually for overall condition and proper functioning. The tests shall comply with the minimum standards of the National Fire Protection Association or its successor.

(f) A fire department that uses self-contained breathing apparatus shall have samples of the breathing air used to refill the cylinders of the self-contained breathing apparatus tested at least every six months by a competent testing laboratory that has equipment designed to test compressed breathing air. The quality of the compressed breathing air and the laboratory conducting the tests of the compressed breathing air quality must conform with the quality and testing procedures established by the National Fire Protection Association or its successor.

§ 419.042. Personal Alert Safety Systems

(a) A fire department shall purchase, provide, and maintain a personal alert safety system for each

of its fire protection personnel who would be exposed to hazardous conditions from fire or other emergencies or where the potential for such exposure exists.

(b) The personal alert safety system must comply with minimum standards of the National Fire Protection Association or its successor.

(c) The fire department shall develop and maintain a standard operating procedure covering the proper use, selection, care, and maintenance of all of its personal alert safety systems.

§ 419.043. Applicable National Fire Protection Association Standard

The National Fire Protection Association standard applicable to protective clothing, self-contained breathing apparatus, or personal alert safety systems is the standard in effect when a fire-fighting agency contracts to purchase the item. The agency may continue to use an item that was in use or contracted for before a change in a standard unless the commission determines that the continued use constitutes an undue risk to the wearer, in which case the commission shall order the use be discontinued and shall set an appropriate date for compliance with the revised standard.

§ 419.044. Incident Management System

(a) A fire department shall develop and maintain an incident management system. The system shall include a written standard operating procedure for the management of emergency incidents. The system shall require operations to be conducted in a manner that recognizes hazards and prevents accidents and injuries.

(b) A fire department shall require all fire protection personnel to be trained in and to use the incident management system. The system shall also be applied to all drills, exercises, and other situations that involve hazards similar to those encountered at actual emergency incidents.

(c) The incident management system shall comply with the minimum standards established by the National Fire Protection Association or its successor.

§ 419.045. Personnel Accountability System

(a) A fire department shall develop and maintain a standard operating procedure for personnel accountability. The system shall provide a rapid accounting of all personnel at an emergency incident.

(b) A fire department shall require all personnel to be trained in and to use the personnel accountability system.

(c) The personnel accountability system shall comply with the minimum standards established by the National Fire Protection Association or its successor. If the National Fire Protection Association standard applicable to personnel accountability systems is revised, the fire department shall comply with the new standard within one year from the effective date of the new standard.

§ 419.046. Fire Protection Personnel Operating at Emergency Incidents

(a) A fire department shall develop, maintain, and use a standard operating procedure covering fire protection personnel operating at emergency incidents. The procedure shall specify an adequate number of personnel to safely conduct emergency scene operations. The procedure shall limit operations to those that can be safely performed by the personnel available at the scene.

(b) A fire department shall require all personnel to be trained in and to use the standard operating procedure pertaining to fire protection personnel operating at emergency incidents.

(c) The minimum standards established by the National Fire Protection Association or its successor for operating procedures for fire protection personnel operating at an emergency incident may be used as a guideline for fire departments when developing standard operating procedures.

(d) The standard operating procedures for structure fires shall comply with the Occupational Safety and Health Administration's Final Rule, 29 C.F.R. Section 1910.134(g)(4), procedures for

interior structural fire fighting of July 1, 1998.

§ 419.047. Commission Enforcement

The commission shall enforce Sections 419.040, 419.041, 419.042, 419.043, 419.044, 419.045, and 419.046. The commission may adopt minimum standards consistent with those sections for protective clothing, self-contained breathing apparatus, personal alert safety systems, incident management systems, personnel accountability systems, fire protection personnel operating at emergency incidents, and applicable National Fire Protection Association standards for fire protection personnel.

SUBCHAPTER C. FIRE DEPARTMENT EMERGENCY PROGRAM

§ 419.051. Definitions

In this subchapter:

- (1) "Program" means the fire department emergency program.
- (2) "Eligible local fire departments and public fire-fighting organizations" means municipal fire departments, volunteer fire departments, and publicly supported organizations that provide equipment or training to fire departments.
- (3) "Equipment" includes protective clothing as defined by Section 419.021 and self-contained breathing apparatus.

§ 419.052. Purpose

The purpose of this subchapter is to promote efficient fire protection for the residents of this state by providing to eligible local fire departments and public fire-fighting organizations:

- (1) long-term or low interest loans or other financial assistance as the commission considers necessary to purchase necessary fire-fighting equipment and facilities; and
- (2) scholarships and grants to better educate and train their members.

§ 419.053. General Powers and Duties of Commission Under This Subchapter

- (a) The commission shall:
 - (1) administer the fire department emergency program as provided by this subchapter and commission rules;
 - (2) contract with professional experts as necessary to assist the commission in carrying out its powers and duties under this subchapter;
 - (3) adopt rules for the administration of this subchapter;
 - (4) adopt and use a seal;
 - (5) administer oaths and take testimony on matters within the commission's jurisdiction under this subchapter;
 - (6) keep an accurate record of its meetings, receipts, and disbursements;
 - (7) submit to the presiding officers of each house of the legislature an annual report of the commission's activities under this subchapter; and
 - (8) consider and approve or disapprove applications for scholarships, grants, loans, and other financial assistance as provided by this subchapter.
- (b) The rules adopted under Subsection (a)(3) must include rules establishing criteria to be used in the evaluation of applications for grants and loans with the assistance of staff.

§ 419.054. Funds Allocation Advisory Committee

(a) The funds allocation advisory committee is composed of six members. Two members are appointed by the State Firemen's and Fire Marshals' Association of Texas. Two members are appointed by the Texas State Association of Fire Fighters. Two members are appointed by the Texas Fire Chiefs Association. A committee member is subject to removal by the commission. A vacancy on the committee caused by removal of a member by the commission shall be filled by the authority that appointed the member who was removed.

(b) The committee shall elect a member of the committee as presiding officer of the committee. The committee shall meet at least twice each calendar year at the call of the presiding officer or at the call of the commission.

(c) The committee shall assist the commission in matters relating to the administration of this subchapter. The committee periodically shall review commission rules relating to the program and recommend changes in the rules to the commission.

(d) The committee shall review and evaluate all applications for financial assistance under this subchapter according to the rules and procedures adopted by the commission. The committee shall recommend to the commission which applications should be approved and which applications should be disapproved. A complete listing of applicants shall be provided to the commission with full disclosure of the reasons for approval or disapproval. If the commission does not concur with the committee's recommendation, the commission shall indicate to the committee the reasons that the commission did not concur with the recommendation and return the applications regarding which the commission did not concur to the committee for further review and evaluation.

§ 419.055. Creation of Program

The fire department emergency program is created to provide scholarships, grants, loans, and other financial assistance to eligible local fire departments and other public fire-fighting organizations.

§ 419.056. Loans or Other Financial Assistance for Equipment and Facilities

(a) The commission may make loans available or provide other financial assistance to an eligible local fire department or other public fire-fighting organization to:

(1) purchase fire-fighting equipment that is necessary for the local fire department or other public fire-fighting organization to meet its fire-fighting responsibilities; or

(2) finance equipment and facilities necessary to comply with federal and state law.

(b) The commission by rule shall establish guidelines for determining eligibility for a loan or other financial assistance under this subchapter and for determining the amounts of loans or other financial assistance that the commission may make available to eligible local fire departments and other public fire-fighting organizations. To be eligible for a loan or other financial assistance, a local fire department or other public fire-fighting organization must establish to the satisfaction of the commission that without a loan or other financial assistance the local fire department or other public fire-fighting organization would be unable to purchase necessary fire-fighting equipment.

(c) The commission by rule shall establish the types of equipment and facilities that a local fire department or other public fire-fighting organization may purchase with a loan or other financial assistance from the commission. The commission may consider national standards relating to fire-fighting equipment and facilities when adopting rules under this subsection.

(d) Out of money appropriated for the implementation of this subchapter, the commission may pay the certification fees of volunteer fire fighters who choose to be certified by the commission under Subchapter D.

(e) Except for money that is spent for administrative costs under this subchapter, the commission each fiscal year shall direct one-half of the money it spends that is appropriated for the implementation of this subchapter to municipal fire departments and one-half of that money to

fire-fighting entities located in rural and unincorporated areas.

§ 419.057. Revolving Fund

The comptroller shall establish in the state treasury the Fire Department Emergency Program revolving fund account. All money collected by the commission as loan payments and as payments on defaulted loans shall be deposited to the credit of the fund. Money deposited in the fund shall be used to make other loans under the program created by this subchapter.

§ 419.058. Scholarships and Grants for Education and Training

(a) The commission may award scholarships and grants to an eligible local fire department or other public fire-fighting organization. A local fire department or other public fire-fighting organization may use a scholarship or grant awarded under this subchapter only to educate and train its members to more effectively meet the members' fire-fighting responsibilities.

(b) The commission by rule shall establish guidelines for determining eligibility for a grant or scholarship under this subchapter and for determining the amount that the commission may award to an eligible local fire department or other public fire-fighting organization. To be eligible for a scholarship or grant, a local fire department or other public fire-fighting organization must establish to the satisfaction of the commission that without a scholarship or grant the local fire department or other public fire-fighting organization would be unable to adequately train and educate its members.

(c) The commission by rule shall determine the types of educational and training programs for which the commission may award a scholarship or grant under this subchapter.

§ 419.059. Application for Scholarship, Grant, Loan, or Other Financial Assistance

(a) A local fire department or other public fire-fighting organization may apply in writing to the commission for a scholarship, grant, loan, or other financial assistance.

(b) The application must include the following information:

- (1) the official name and address of the applicant;
- (2) the purposes for which the local fire department or other public fire-fighting organization would use the requested scholarship, grant, loan, or other financial assistance;
- (3) the amount of the scholarship, grant, loan, or other financial assistance requested;
- (4) if a loan, the proposed plan for repayment;
- (5) financial information relating to the applicant as requested by the commission; and
- (6) any other information the commission requires in order to make a decision on the application.

(c) The commission by rule shall prescribe the form of the application and the procedure for submitting and processing the application.

§ 419.060. Review of Application

In addition to the criteria established by commission rules, the commission, in reviewing an application, shall consider:

- (1) the purpose or purposes for which the applicant would use the scholarship, grant, loan, or other financial assistance;
- (2) the needs of that applicant as compared to the needs of other eligible applicants;
- (3) the financial need of the applicant for the money;
- (4) the availability of other money to the applicant; and
- (5) the ability of the applicant to finance its activities without a state scholarship, grant, loan, or other financial assistance.

§ 419.061. Approval or Rejection of Application

The commission by rule shall establish procedures for accepting or rejecting applications.

§ 419.062. Contracts, Agreements, and Other Documents

(a) If the commission approves a loan application, the commission shall contract with the applicant to provide the funds under this subchapter. The commission shall provide the funds in accordance with the terms and conditions provided by this subchapter and commission rules.

(b) The commission may execute any other documents necessary to make a legally binding agreement as to the transfer and expenditure of the amount to be loaned or awarded and the repayment of any amount loaned.

§ 419.063. Limitation on Scholarships, Grants, Loans, and Other Financial Assistance; Use of Appropriated Funds

(a) The commission may not make awards or loans under this subchapter to any one applicant in a total amount that is greater than an amount equal to five percent of the total amount of money appropriated to the program for the fiscal year during which the award or loan is made.

(b) The commission may not approve an application if the current appropriations for the program are insufficient to pay the total amount requested under the application.

(c) The commission may not use money appropriated for scholarships, grants, loans, and other financial assistance to be awarded under this subchapter for the administrative expenses of the funds allocation advisory committee.

(d) The commission may not approve an application if the applicant provides fire suppression services and the applicant does not routinely and consistently report incidents to the Texas Fire Incident Reporting System and participate in the National Incident Management System in accordance with the Federal Emergency Management Agency timeline. The applicant shall furnish sufficient proof of the required reporting to the commission at the time the application for a scholarship, grant, loan, or other financial assistance is submitted.

§ 419.064. Default on Loan

(a) If a local fire department or other public fire-fighting organization cannot make payments on a loan made under this subchapter, the commission shall attempt to collect from the borrower as provided by this subchapter, the terms of the loan contract, and other agreements.

(b) The attorney general, at the request of the commission, shall take all necessary legal action to assist the commission in recovering amounts of a defaulted loan.

SUBCHAPTER D. VOLUNTEER FIRE FIGHTERS AND FIRE DEPARTMENTS

§ 419.071. Voluntary Certification Program for Volunteer Fire Fighters and Fire Departments

(a) The commission shall develop a voluntary certification program for volunteer fire fighters and volunteer fire departments. The program must include the same components and requirements as the certification program established under Subchapter B. The certification program for volunteer fire fighters and volunteer fire departments may take into account the different circumstances of volunteer fire fighters in establishing deadlines for completion of various components or requirements of the program.

(b) A certificate for a given type and level of certification that is issued under the certification program established under this section is equivalent to a certificate for the same type and level issued under Subchapter B. The certificate is subject to the same issuance and renewal requirements as a certificate issued under Subchapter B, and a certificate holder may be disciplined and regulated in the same manner as provided by Subchapter B.

(c) A volunteer fire fighter, volunteer fire department, or facility that provides training to volunteer

fire fighters is not required to participate in any component of the commission's program under this chapter. A volunteer fire fighter, volunteer fire department, or facility that provides training to volunteer fire fighters may on request participate in one or more components of the program under this subchapter as appropriate. The volunteer fire department with which a volunteer fire fighter is affiliated may, but is not required to, pay the certificate fee for a volunteer fire fighter certified under this subchapter.

(d) At least 30 days before the expiration of a volunteer fire fighter's certificate, the commission shall send written notice of the impending certificate expiration to the last known address of the fire fighter according to the records of the commission.

§ 419.072. Obtaining Paid Employment as Fire Fighter

(a) Notwithstanding anything to the contrary in Subchapter B , a fire department may appoint as fire protection personnel a volunteer fire fighter or former volunteer fire fighter who is certified by the commission under this subchapter. On receiving the appointment from the employing fire department, the person is considered to be certified fire protection personnel.

(b) In this section, "fire department" has the meaning assigned by Section 419.021.

§ 419.073. Individual Certificate Holder; Certificate Renewal

(a) A volunteer fire fighter certified under this subchapter may continue to hold and renew the certificate without regard to whether the person continues to be affiliated with a volunteer fire department.

(b) A former volunteer fire fighter who is no longer affiliated with a volunteer fire department may renew an unexpired certificate before the expiration of the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission the required renewal fee.

(c) If a person's certificate has been expired for 30 days or less, the person may renew the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission the required renewal fee and a fee that is one-half of the certification fee for the certificate.

(d) If a person's certificate has been expired for longer than 30 days but less than one year, the person may renew the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission all unpaid renewal fees and a fee that is equal to the certification fee.

(e) If a person's certificate has been expired for one year or longer, the person may not renew the certificate.

(f) The commission shall establish by rule the requirements evidence must meet to be considered satisfactory for the purpose of complying with this section.

(g) Notwithstanding any other law, the commission may by rule establish a procedure to recertify a person if:

(1) the person's certification has lapsed because of the person's good faith clerical error, including the person's failure to submit fees in a timely manner; or

(2) the person's certification has lapsed as a result of termination of the person's employment and the person has been restored to employment as a result of a disciplinary procedure.

SUBCHAPTER E. PAID FIRE FIGHTERS AND FIRE DEPARTMENTS NOT CONNECTED WITH A LOCAL GOVERNMENT

§ 419.081. Mandatory Inspection and Regulation of Certain State Agencies

(a) Each state agency providing fire protection shall furnish all of its employees who engage in fire fighting with self-contained breathing apparatus as provided by Section 419.041 for local fire departments.

(b) At least biennially, the commission shall visit and inspect each state agency providing fire protection to determine if the agency is complying with applicable portions of this chapter and commission rules.

§ 419.082. Training for State Agency Fire Fighters

The commission may allow a state agency employee who provides fire protection to attend fire protection training programs conducted under Subchapter B, including an employee who is not regulated under Section 419.083. The commission may authorize reimbursement for a state agency's costs under this section as authorized by the legislature, whether or not the agency is regulated under Section 419.083.

§ 419.083. Voluntary Regulation of Certain State Officials, State Agencies, and State Agency Employees

(a) Certain state officials, state agencies, and state agency employees may apply to the commission for regulation under one or more discrete components of the commission's regulatory authority under Subchapter B¹. The commission shall define the components by rule.

(b) A state agency employee who would be fire protection personnel under Section 419.021 if the person were employed by a local government, or who is employed full-time in the field of fire instruction or fire training evaluation and who meets the commission's training and experience requirements for fire protection personnel, may apply to the commission for regulation under this section. The fact that a state agency employee becomes regulated by the commission under this section does not make the employing agency subject to commission regulation under this section, except that the commission may require reports from the agency that relate to the employee. A state agency may pay an employee's fees under this subsection.

(c) A person who is elected to public office in state government and who holds a commission certificate at the time the person takes office may maintain the certificate by applying to the commission for regulation under this section and by paying the required renewal fee in accordance with Section 419.034. A person applying for regulation under this section must comply with continuing education requirements applicable to the discipline in which the certificate is held in order to maintain the certificate.

(d) A state agency may apply to the commission for regulation under this section if the agency is the employing authority for persons who, if employed by a local government, would be fire protection personnel under Section 419.021.

(e) The commission shall prescribe the procedures under which a state official, state agency, or agency employee may apply for regulation under this section and the means by which the state official, state agency, or agency employee may present evidence that the official, agency, or employee is eligible for regulation under this section.

(f) The commission shall determine whether a state official, state agency, or agency employee that has applied for regulation is eligible for regulation under this section. The commission shall approve a request for regulation if the official, agency, or employee meets the requirements of Subsection (b), (c), or (d), and the commission shall notify the applying official, agency, or employee of its decision.

(g) A state official, state agency, or agency employee regulated under this section is subject to the appropriate component or components of Subchapter B and applicable rules adopted under this chapter to the same extent as a local government, a fire department, or fire protection personnel employed by a local government.

(h) A state agency or agency employee that is subject to regulation under this section is entitled to a reasonable period in which to comply with applicable requirements. The commission by rule shall determine the time period in which a state agency or agency employee must come into compliance with each requirement.

§ 419.084. Voluntary Regulation of Certain Federal Agencies and Federal Fire Fighters

(a) Certain federal agencies and federal fire fighters may apply to the commission for regulation under one or more discrete components of the commission's regulatory authority under Subchapter B. The commission shall define the components by rule.

(b) A federal fire fighter who would be fire protection personnel under Section 419.021 if the person were employed by a local government may apply to the commission for regulation under this section. The fact that a federal fire fighter becomes regulated by the commission under this section does not make the employing agency subject to commission regulation under this section.

(c) A federal agency may apply to the commission for regulation under this section if the agency is the employing authority for persons who, if employed by a local government, would be fire protection personnel under Section 419.021.

(d) The commission shall prescribe the procedures under which a federal agency or federal fire fighter may apply for regulation under this section and the means by which a federal agency or federal fire fighter may present evidence that the agency or fire fighter is eligible for regulation under this section.

(e) The commission shall determine whether a federal agency or federal fire fighter that has applied for regulation is eligible for regulation under this section. The commission shall approve a request for regulation if the agency or fire fighter meets the requirements of Subsection (b) or (c), and the commission shall notify the applying agency or fire fighter of its decision.

(f) A federal agency or federal fire fighter regulated under this section is subject, to the extent allowed by federal law, to the appropriate component or components of Subchapter B and applicable rules adopted under this chapter to the same extent as a local government, a fire department, or fire protection personnel employed by a local government.

(g) A federal agency or federal fire fighter that is subject to regulation under this section is entitled to a reasonable period in which to comply with applicable requirements. The commission by rule shall determine the time period in which a federal agency or federal fire fighter must come into compliance with each requirement.

(h) In this section, "federal fire fighter" means a person who is employed to provide fire protection to property of the federal government by:

- (1) an agency of the federal government; or
- (2) an entity that contracts with the federal government.

§ 419.085. Voluntary Regulation of Certain Nongovernmental Departments

(a) A nongovernmental entity may apply to the commission for regulation under Subchapter B if:

- (1) the entity is the employing authority for persons who, if employed by a local government,

would be fire protection personnel under Section 419.021; and

(2) at the time of application, those fire protection employees are employed to provide fire protection for an unincorporated area that:

(A) constitutes a rating territory established by the State Board of Insurance with a protected key rate assigned by the board; and

(B) has a population of more than 25,000.

(b) The commission shall prescribe the procedures under which a nongovernmental entity may apply for regulation under this section and the means by which it may present evidence that it is eligible for regulation under Subsection (a).

(c) The commission shall determine whether an entity that has applied for regulation under this section is eligible for regulation under Subsection (a). The commission shall approve a request for regulation if the entity meets the requirements of Subsection (a), and the commission shall notify the applying entity and the affected fire protection employees of its decision.

(d) A nongovernmental entity, department, and fire protection employee regulated under this section are subject to Subchapter B and applicable commission rules to the same extent that Subchapter B and applicable commission rules apply to a local government, a fire department, or fire protection personnel employed by a local government.

(e) A person, department, or other entity that is subject to regulation under this section is entitled to a reasonable period in which to comply with the requirements of Subchapter B and applicable commission rules. The commission by rule shall determine the time period in which a person, department, or other entity must come into compliance with each requirement.

§ 419.086. Eligibility For Certain Training Assistance

If an entity or the employees of an entity are regulated under this subchapter so that as a consequence of the regulation a certification fee is paid to the commission on behalf of each employee of the entity who would be fire protection personnel under Section 419.021 if the employee were employed by a local government, the commission shall use the special account in the general revenue fund created under Section 419.026(d) to provide training assistance to the entity to the same extent that the commission provides training assistance to a fire department under Section 419.031.

§ 419.087. Mandatory Regulation of Certain Nongovernmental Organizations and Personnel

(a) In this section, "fire department," "fire protection personnel," and "local government" have the meanings assigned by Section 419.021.

(b) An organization that is not a local government, a department of a local government, or a state or federal agency is subject to regulation by the commission under Subchapter B¹ if the organization:

(1) provides fire protection for a local government for profit under a contract or other agreement with the local government; and

(2) would be a fire department if it were a department of a local government.

(c) A person who is not an employee of a local government or of a state or federal agency is subject to regulation by the commission under Subchapter B if the person:

(1) provides fire protection for a local government under a contract or other agreement between the local government and either the person or an organization subject to regulation under Subsection (b); and

(2) would be fire protection personnel if employed by a local government.

(d) A person or organization that is subject to regulation by the commission under this section is subject to Subchapter B and applicable commission rules to the same extent that Subchapter B and applicable commission rules apply to a fire department or to fire protection personnel.

(e) The commission may create a separate certification class for persons regulated under this section.

(f) A local government which provided fire protection for its citizens utilizing a fire department and fire protection personnel as of May 31, 1997, may not thereafter provide fire protection by utilizing an organization which is not a local government, a department of local government, or a state or federal agency and which provides fire protection for the local government for profit under a contract or other agreement with the local government without approval of a majority of the voters at an election called for that purpose.

SUBCHAPTER F. REVIEW OF FIRE DEPARTMENT TESTS

§ 419.101. Applicability

This subchapter applies to the initial tests administered by a fire department used to measure the ability of a person to perform the essential functions of a job.

§ 419.102. Review of Tests

(a) The commission shall authorize the Commission on Human Rights to review the administration of tests by fire departments to determine whether the tests are administered in a manner that complies with Chapter 21, Labor Code.

(b) The Commission on Human Rights shall by rule establish an objective system to determine how to select the departments the Commission on Human Rights will review and when the Commission on Human Rights will review a certain department.

§ 419.103. Discrimination Prohibited; Disparate Impact

(a) A test may not be administered in a manner that discriminates on the basis of race or color. A test may not be administered in a manner that discriminates on the basis of disability, religion, sex, national origin, or age unless the discrimination is a result of a bona fide occupational qualification.

(b) In determining whether the administration of a test complies with Chapter 21, Labor Code, the Commission on Human Rights shall ascertain whether the test has had a disparate impact on any group defined by race, color, disability, religion, sex, national origin, or age. If the disparate impact on a group is the result of a bona fide occupational qualification, the fire department has complied with that chapter.

§ 419.104. Violation; Recommendations of Commission On Human Rights

(a) If the Commission on Human Rights determines that the administration of a test by a fire department does not comply with Chapter 21, Labor Code, the Commission on Human Rights shall recommend appropriate changes for the administration of the test.

(b) The department shall consider a recommendation made under Subsection (a) and shall revise the administration of its tests to comply with this chapter.

§ 419.105. Authority to Administer Test

This subchapter does not affect the authority of a fire department to administer, devise, or conduct a test or to require a certain level of performance on a test as a prerequisite to employment or continued employment.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

§ 419.902. Coordination With Firemen's Training School

The commission and the director of the Texas Engineering Extension Service of The Texas A&M University System shall enter into a memorandum of understanding to coordinate the responsibilities of the commission with the training provided by the firemen's training school operated under Section 86.16, Education Code.

§ 419.903. Coordination With Texas Forest Service

The commission and the director of the Texas Forest Service shall enter into a memorandum of understanding to coordinate the provision of training assistance and other assistance to fire-fighting entities.

§ 419.904. Technical Assistance to Rural Fire Prevention Districts

The commission may on request provide technical assistance to rural fire prevention districts, including advice on the efficient and effective provision of fire protection within a district.

§ 419.905. Appeal of Commission Decisions

(a) A person dissatisfied with an action of the commission may appeal the action in accordance with Chapter 2001.

(b) The attorney general, the district or county attorney, or an assistant of one of these persons shall represent the commission in an appeal under this section.

§ 419.906. Administrative and Civil Penalties; Injunction

(a) In addition to other penalties imposed by law, a person who violates this chapter or a rule adopted under this chapter is subject to an administrative penalty in an amount set by the commission not to exceed \$1,000 for each violation. In addition to the administrative penalty, the person must pay costs incurred by the attorney general's office under this subsection. The administrative penalty shall be assessed in a proceeding conducted in accordance with Chapter 2001.

(b) The attorney general or the commission may institute a suit for an injunction to enforce this chapter. Venue for the suit is in a district court in Travis County. The court may also award the commission a civil penalty not to exceed \$1,000 for each violation of this chapter or a rule adopted under this chapter, plus court costs, reasonable attorney fees, and costs incurred by the commission or the attorney general's office under this subsection.

(c) The commission may enter into a consent order or settlement agreement with any person under the commission's jurisdiction under this chapter or other law. The consent order or settlement agreement may include an agreement between the commission and the person under which the person will make restitution to a third party or pay a monetary penalty to the commission. The consent order or settlement agreement is valid and enforceable without regard to whether the commission is authorized to order restitution or impose the monetary penalty under other law in the absence of the affected person's agreement.

§ 419.907. Location of Offices of Commission, State Fire Marshal, and Texas Forest Service

(a) To the extent feasible, the commission, the state fire marshal, and the Texas Forest Service shall co-locate office space outside of Travis County used for related functions performed¹ by the three entities.

(b) The commission, the commissioner of insurance, and the Texas Forest Service may enter

into a memorandum of understanding to implement this section.

CHAPTER 607. BENEFITS RELATING TO CERTAIN DISEASES AND ILLNESSES

SUBCHAPTER A. CONTAGIOUS DISEASES

§ 607.001.	Definition
§ 607.002.	Reimbursement
§ 607.003.	Physician of Choice
§ 607.004.	Preventative Immunizations and Vaccinations

SUBCHAPTER B. DISEASES OR ILLNESSES SUFFERED BY FIREFIGHTERS AND EMERGENCY MEDICAL TECHNICIANS

§ 607.051.	Definitions
§ 607.052.	Applicability
§ 607.053.	Immunization; Smallpox
§ 607.054.	Tuberculosis or Other Respiratory Illness
§ 607.055.	Cancer
§ 607.056.	Acute Myocardial Infarction Or Stroke
§ 607.057.	Effect Of Presumption
§ 607.058.	Presumption Rebuttable
§ 607.059.	Prohibited Payment

SUBCHAPTER A. CONTAGIOUS DISEASES

§ 607.001. Definition

In this chapter, "public safety employee" means a peace officer, fire fighter, detention officer, county jailer, or emergency medical services employee of this state or a political subdivision of this state.

§ 607.002. Reimbursement

A public safety employee who is exposed to a contagious disease is entitled to reimbursement from the employing governmental entity for reasonable medical expenses incurred in treatment for the prevention of the disease if:

- (1) the disease is not an "ordinary disease of life" as that term is used in the context of a workers' compensation claim;
- (2) the exposure to the disease occurs during the course of the employment; and
- (3) the employee requires preventative medical treatment because of exposure to the disease.

§ 607.003. Physician of Choice

A public safety employee who is exposed to a disease described by Section 607.002 is entitled to be treated for the prevention of that disease by the physician of the employee's choice.

§ 607.004. Preventative Immunizations and Vaccinations

(a) A certified fire fighter or other governmental employee who operates an ambulance or who responds to emergency medical calls is entitled to preventative immunization for any disease to which the fire fighter or other governmental employee may be exposed in performing official duties and for which immunization is possible.

(b) The employee and any member of the employee's immediate family are entitled to vaccination for a contagious disease to which the employee is exposed during the course of employment.

(c) The employing governmental entity may satisfy the requirements of this section by:

(1) providing the immunization or vaccination without charge; or

(2) reimbursing the employee for any necessary and reasonable expenses incurred by the employee for the immunization or vaccination.

SUBCHAPTER B. DISEASES OR ILLNESSES SUFFERED BY FIREFIGHTERS AND EMERGENCY MEDICAL TECHNICIANS

§ 607.051. DEFINITIONS

In this subchapter:

(1) "Disability" means partial or total disability.

(2) "Emergency medical technician" means an individual who is certified as an emergency medical technician by the Department of State Health Services as provided by Chapter 773, Health and Safety Code, and who is employed by a political subdivision.

(3) "Firefighter" means:

(A) an individual who is defined as fire protection personnel under Section 419.021; or

(B) an individual who is a volunteer firefighter certified by the Texas Commission on Fire Protection or the State Firemen's and Fire Marshals' Association of Texas.

§ 607.052. APPLICABILITY

(a) Notwithstanding any other law, this subchapter applies only to a firefighter or emergency medical technician who:

(1) on becoming employed or during employment as a firefighter or emergency medical technician, received a physical examination that failed to reveal evidence of the illness or disease for which benefits or compensation are sought using a presumption established by this subchapter;

(2) is employed for five or more years as a firefighter or emergency medical technician; and

(3) seeks benefits or compensation for a disease or illness covered by this subchapter that is discovered during employment as a firefighter or emergency medical technician.

(b) A presumption under this subchapter does not apply:

(1) to a determination of a survivor's eligibility for benefits under Chapter 615;

(2) in a cause of action brought in a state or federal court except for judicial review of a proceeding in which there has been a grant or denial of employment-related benefits or compensation;

(3) to a determination regarding benefits or compensation under a life or disability insurance policy purchased by or on behalf of the firefighter or emergency medical technician that provides coverage in addition to any benefits or compensation required by law; or

(4) if the disease or illness for which benefits or compensation is sought is known to be caused by the use of tobacco and:

(A) the firefighter or emergency medical technician is or has been a user of tobacco; or

(B) the firefighter's or emergency medical technician's spouse has, during the marriage, been a user of tobacco that is consumed through smoking.

(c) This subchapter does not create a cause of action.

(d) This subchapter does not enlarge or establish a right to any benefit or compensation or eligibility for any benefit or compensation.

(e) A firefighter or emergency medical technician who uses a presumption established under this subchapter is entitled only to the benefits or compensation to which the firefighter or emergency medical technician would otherwise be entitled to receive at the time the claim for benefits or compensation is filed.

(f) For purposes of this subchapter, an individual described by Section 607.051(3)(B) is considered to have been employed or compensated while the individual actively served as a volunteer firefighter. An individual who actively serves as a volunteer firefighter is one who participates in a minimum of 40 percent of the drills conducted by the individual's department and 25 percent of the fire or other emergency calls received by the department during the time that the volunteer firefighter is on call.

(g) This subchapter applies to a firefighter or emergency medical technician who provides services as an employee of an entity created by an interlocal agreement.

(h) Subsection (b)(4) only prevents the application of the presumption authorized by this subchapter and does not affect the right of a firefighter or emergency medical technician to provide proof, without the use of that presumption, that an injury or illness occurred during the course and scope of employment.

§ 607.053. IMMUNIZATION; SMALLPOX

(a) A firefighter or emergency medical technician is presumed to have suffered a disability or death during the course and scope of employment if the firefighter or emergency medical technician:

(1) received preventative immunization against smallpox, or another disease to which the firefighter or emergency medical technician may be exposed during the course and scope of employment and for which immunization is possible; and

(2) suffered death or total or partial disability as a result of the immunization.

(b) An immunization described by this section is considered preventative whether the immunization occurs before or after exposure to the disease for which the immunization is prescribed.

(c) A presumption established under Subsection (a) may not be rebutted by evidence that the immunization was:

(1) not required by the employer;

(2) not required by law; or

(3) received voluntarily or with the consent of the firefighter or emergency medical technician.

(d) A firefighter or emergency medical technician who suffers from smallpox that results in death or total or partial disability is presumed to have contracted the disease during the course and scope of employment as a firefighter or emergency medical technician.

§ 607.054. TUBERCULOSIS OR OTHER RESPIRATORY ILLNESS

A firefighter or emergency medical technician who suffers from tuberculosis, or any other disease or illness of the lungs or respiratory tract that has a statistically positive correlation with service as a firefighter or emergency medical technician, that results in death or total or partial disability is presumed to have contracted the disease or illness during the course and scope of employment as a firefighter or emergency medical technician.

§ 607.055. CANCER

(a) A firefighter or emergency medical technician who suffers from cancer resulting in death

or total or partial disability is presumed to have developed the cancer during the course and scope of employment as a firefighter or emergency medical technician if:

(1) the firefighter or emergency medical technician:

(A) regularly responded on the scene to calls involving fires or fire fighting; or

(B) regularly responded to an event involving the documented release of radiation or a known or suspected carcinogen while the person was employed as a firefighter or emergency medical technician; and

(2) the cancer is known to be associated with fire fighting or exposure to heat, smoke, radiation, or a known or suspected carcinogen, as described by Subsection (b).

(b) This section applies only to a type of cancer that may be caused by exposure to heat, smoke, radiation, or a known or suspected carcinogen as determined by the International Agency for Research on Cancer.

§ 607.056. ACUTE MYOCARDIAL INFARCTION OR STROKE

(a) A firefighter or emergency medical technician who suffers an acute myocardial infarction or stroke resulting in disability or death is presumed to have suffered the disability or death during the course and scope of employment as a firefighter or emergency medical technician if:

(1) while on duty, the firefighter or emergency medical technician:

(A) was engaged in a situation that involved nonroutine stressful or strenuous physical activity involving fire suppression, rescue, hazardous material response, emergency medical services, or other emergency response activity; or

(B) participated in a training exercise that involved nonroutine stressful or strenuous physical activity; and

(2) the acute myocardial infarction or stroke occurred while the firefighter or emergency medical technician was engaging in the activity described under Subdivision (1).

(b) For purposes of this section, "nonroutine stressful or strenuous physical activity" does not include clerical, administrative, or nonmanual activities.

§ 607.057. EFFECT OF PRESUMPTION

Except as provided by Section 607.052(b), a presumption established under this subchapter applies to a determination of whether a firefighter's or emergency medical technician's disability or death resulted from a disease or illness contracted in the course and scope of employment for purposes of benefits or compensation provided under another employee benefit, law, or plan, including a pension plan.

§ 607.058. PRESUMPTION REBUTTABLE

A presumption under Section 607.053, 607.054, 607.055, or 607.056 may be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a firefighter or emergency medical technician caused the individual's disease or illness.

§ 607.059. PROHIBITED PAYMENT

No payment shall be made to the subsequent injury fund under Section 403.007, Labor Code, for any death resulting from a disease or illness presumed to have been contracted in the course and scope of employment under this subchapter.

CHAPTER 614. PEACE OFFICERS AND FIRE FIGHTERS

SUBCHAPTER A. LEGISLATIVE LEAVE FOR PEACE OFFICER OR FIRE FIGHTER

Sec. 614.001. Definitions.

Sec. 614.002. Applicability of Subchapter.

Sec. 614.003. Entitlement to Legislative Leave.

Sec. 614.004. Eligibility for Legislative Leave.

Sec. 614.005. Money Required to Offset Costs of Legislative Leave.

Sec. 614.006. Employer to Grant Legislative Leave; Exceptions.

Sec. 614.007. Insufficiency in Number of Employees; Exchange of Time by Other Employees.

Sec. 614.008. Legislative Leave not a Break in Service.

Sec. 614.009. Legislative Leave to Attend Session of Congress.

Sec. 614.010. Employees Association may not Reimburse Certain Costs.

(Sections 614.011 to 614.020 reserved for expansion)

SUBCHAPTER B. COMPLAINT AGAINST LAW ENFORCEMENT OFFICER OR FIRE FIGHTER

Sec. 614.021. Applicability of Subchapter.

Sec. 614.022. Complaint to be in Writing and Signed by Complainant.

Sec. 614.023. Copy of Complaint to be Given to Officer or Employee.

(Sections 614.024 to 614.040 reserved for expansion)

SUBCHAPTER A. LEGISLATIVE LEAVE FOR PEACE OFFICER OR FIRE FIGHTER

§ 614.001. Definitions

In this subchapter:

(1) "Employer" means the governmental entity that employs or appoints a peace officer or fire fighter or that the peace officer or fire fighter is elected to serve.

(2) "Fire fighter" means a member of a fire department who performs a function listed in Section 143.003(4), Local Government Code, without regard to whether the individual is subject to a civil service system or program.

(3) "Peace officer" means an individual elected, appointed, or employed to serve as a peace officer for a governmental entity under Article 2.12, Code of Criminal Procedure, or other law.

§ 614.002. Applicability of Subchapter

This subchapter applies only to a peace officer or fire fighter employed by:

(1) the state;

(2) a municipality with a population of 200,000 or more; or

(3) a county with a population of 500,000 or more.

§ 614.003. Entitlement to Legislative Leave

A peace officer or fire fighter is entitled as provided by this subchapter to legislative leave to serve in, appear before, or petition a governmental body during a regular or special session of the body.

§ 614.004. Eligibility for Legislative Leave

(a) To be eligible for legislative leave, a peace officer or fire fighter must submit a written application to the individual's employer on or before the 30th day before the date the individual

intends to begin the legislative leave.

(b) The application must state the length of the requested leave and that the peace officer or fire fighter is willing to reimburse the employer for any wages, pension, or other costs the employer will incur as a result of the leave.

(c) The length of requested leave may not exceed the length of the session.

§ 614.005. Money Required to Offset Costs of Legislative Leave

(a) An employer may require reimbursement of all costs associated with legislative leave under this subchapter.

(b) Within 30 days after the date an employer receives an application, the employer shall notify the peace officer or fire fighter in writing of the actual amount of money required to offset the costs the employer will incur.

(c) An employer may require a peace officer or fire fighter to post the money before granting the leave.

(d) A peace officer or fire fighter shall give to the employer a sworn statement identifying the source of the money posted.

§ 614.006. Employer to Grant Legislative Leave; Exceptions

An employer shall grant legislative leave to a peace officer or fire fighter who submits an application as prescribed by this subchapter and who complies with any requirement relating to payment of costs:

(1) except in an emergency; or

(2) unless granting the leave will result in having an insufficient number of employees to carry out the normal functions of the employer.

§ 614.007. Insufficiency in Number of Employees; Exchange of Time by Other Employees

(a) If an employer determines that granting a legislative leave will result in having an insufficient number of employees to carry out the normal functions of the employer, another peace officer or fire fighter of equal rank may volunteer to exchange time of work with the applicant if overtime does not result.

(b) The employer shall allow a volunteer under Subsection (a) to work for the applicant and shall grant the legislative leave, if overtime will not result and if the volunteer work will result in having a sufficient number of employees.

§ 614.008. Legislative Leave not a Break in Service

Legislative leave under this subchapter is not a break in service for any purpose and is treated as any other paid leave, except as provided by Section 614.005.

§ 614.009. Legislative Leave to Attend Session of Congress

Legislative leave granted under this subchapter to a peace officer or fire fighter to attend a session of the Congress of the United States shall be granted for not longer than 30 percent of the applicant's total annual working days during each year in which leave is requested.

§ 614.010. Employees' Association may not Reimburse Certain Costs

A peace officers' or fire fighters' association may not reimburse a member of the legislature or an employer of a peace officer or fire fighter who serves as a member of the legislature for wages, pension contributions, or other costs incurred as a result of legislative leave taken under this subchapter.

SUBCHAPTER B. COMPLAINT AGAINST LAW ENFORCEMENT OFFICER OR FIRE FIGHTER

§ 614.021. Applicability of Subchapter

- (a) Except as provided by Subsection (b), this subchapter applies only to a complaint against:
- (1) a law enforcement officer of the State of Texas, including an officer of the Department of Public Safety or of the Texas Alcoholic Beverage Commission;
 - (2) a fire fighter who is employed by this state or a political subdivision of this state;
 - (3) a peace officer under Article 2.12, Code of Criminal Procedure, or other law who is appointed or employed by a political subdivision of this state; or
 - (4) a detention officer or county jailer who is appointed or employed by a political subdivision of this state.
- (b) This subchapter does not apply to a peace officer or fire fighter appointed or employed by a political subdivision that is covered by a meet and confer or collective bargaining agreement under Chapter 143 or 174, Local Government Code, if that agreement includes provisions relating to the investigation of, and disciplinary action resulting from, a complaint against a peace officer or fire fighter, as applicable.

§ 614.022. Complaint to be in Writing and Signed by Complainant

To be considered by the head of a state agency or by the head of a fire department or local law enforcement agency, the complaint must be:

- (1) in writing; and
- (2) signed by the person making the complaint.

§ 614.023. Copy of Complaint to be Given to Officer or Employee

- (a) A copy of a signed complaint against a law enforcement officer of this state or a fire fighter, detention officer, county jailer, or peace officer appointed or employed by a political subdivision of this state shall be given to the officer or employee within a reasonable time after the complaint is filed.
- (b) Disciplinary action may not be taken against the officer or employee unless a copy of the signed complaint is given to the officer or employee.
- (c) In addition to the requirement of Subsection (b), the officer or employee may not be indefinitely suspended or terminated from employment based on the subject matter of the complaint unless:
- (1) the complaint is investigated; and
 - (2) there is evidence to prove the allegation of misconduct.

615. FINANCIAL ASSISTANCE TO SURVIVORS OF CERTAIN LAW ENFORCEMENT OFFICERS, FIRE FIGHTERS, AND OTHERS

SUBCHAPTER A. GENERAL PROVISIONS

- | | |
|---------------|--|
| Sec. 615.001. | Definitions. |
| Sec. 615.002. | Administration of Chapter. |
| Sec. 615.003. | Applicability. |
| Sec. 615.004. | Effect of Award. |
| Sec. 615.005. | Assistance not Assignable; Payments Exempt. |
| Sec. 615.006. | Designation of Custodial Personnel. |
| Sec. 615.007. | Certain Volunteer Fire Fighting Units Considered Agents of Political |

- Subdivision.
Sec. 615.008. Certain Police Reserve or Auxiliary Units Considered Agents of Political Subdivision.
(Sections 615.009 to 615.020 reserved for expansion)

SUBCHAPTER B. PAYMENTS TO ELIGIBLE SURVIVORS

- Sec. 615.021. Eligible Survivors.
Sec. 615.022. Payment to Surviving Spouse.
Sec. 615.0225 Education Benefits For Certain Survivors.

SUBCHAPTER C. ADMINISTRATION AND PROCEDURE

- Sec. 615.041. Proof of Claim.
Sec. 615.042. Award and Payment of Assistance.
Sec. 615.043. Denial of Claim.
Sec. 615.044. Appeals.
Sec. 615.045. Records.

SUBCHAPTER D. HEALTH INSURANCE COVERAGE FOR ELIGIBLE SURVIVORS

- Sec. 615.071. Applicability
Sec. 615.072. Eligible Survivors
Sec. 615.073. Benefit to Surviving Spouse
Sec. 615.074. Benefit to Dependent
Sec. 615.075. Notice
Sec. 615.076. Level of Coverage
Sec. 615.077. Payments; Rate
Sec. 615.078. Certain Practices Not Prohibited or Affected
Sec. 615.079. Benefits Additional

SUBCHAPTER E. ADDITIONAL BENEFITS FOR ELIBIBLE SURVIVORS

- Sec. 615.101. Definition
Sec. 615.102. Duty Weapon and Badge
Sec. 615.103. Burial with Uniform
Sec. 615.104. Benefits Additional

SUBCHAPTER F. ADDITIONAL BENEFITS FOR SURVIVORS OF PEACE OFFICER.

- Sec. 615.121. Payment to Surviving Spouse.
Sec. 615.122. Payment to Surviving Minor Children.
Sec. 615.123. Benefits Additional.

SUBCHAPTER A. GENERAL PROVISIONS

§ 615.001. Definition

(1) In this chapter, "minor child" means a child who, on the date of the death of an individual listed under Section 615.003, is younger than 18 years of age; and

(2) if the child is not a biological or adopted child, was claimed as a dependent on the federal income tax return of an individual listed under Section 615.003 for the year preceding the year of the individual's death.

§ 615.002. Administration of Chapter

The board of trustees of the Employees Retirement System of Texas shall administer this chapter under rules adopted by the board.

§ 615.003. Applicability

This chapter applies only to eligible survivors of the following individuals:

- (1) an individual elected, appointed, or employed as a peace officer by the state or a political subdivision of the state under Article 2.12, Code of Criminal Procedure, or other law;
- (2) a paid probation officer appointed by the director of a community supervision and corrections department who has the duties set out in Section 76.002 and the qualifications set out in Section 76.005, or who was appointed in accordance with prior law;
- (3) a parole officer employed by the pardons and paroles division of the Texas Department of Criminal Justice who has the duties set out in Section 508.001 and the qualifications set out in Section 508.113 or in prior law;
- (4) a paid jailer;
- (5) a member of an organized police reserve or auxiliary unit who regularly assists peace officers in enforcing criminal laws;
- (6) a member of the class of employees of the institutional division or the state jail division of the Texas Department of Criminal Justice formally designated as custodial personnel under Section 615.006 by the Texas Board of Criminal Justice or its predecessor in function;
- (7) a jailer or guard of a county jail who is appointed by the sheriff and who:
 - (A) performs a security, custodial, or supervisory function over the admittance, confinement, or discharge of prisoners; and
 - (B) is certified by the Texas Commission on Law Enforcement Officer Standards and Education;
- (8) a juvenile correctional employee of the Texas Youth Commission;
- (9) an employee of the Texas Department of Mental Health and Mental Retardation who:
 - (A) works at the department's maximum security unit; or
 - (B) performs on-site services for the Texas Department of Criminal Justice;
- (10) an individual who is employed by the state or a political or legal subdivision and is subject to certification by the Texas Commission on Fire Protection;
- (11) an individual employed by the state or a political or legal subdivision whose principal duties are aircraft crash and rescue fire fighting;
- (12) a member of an organized volunteer fire-fighting unit that:
 - (A) renders fire-fighting services without remuneration;
 - (B) consists of not fewer than 20 active members, a majority of whom are present at each meeting; and
 - (C) conducts a minimum of two drills each month, each two hours long; or
- (13) an individual who:
 - (A) performs emergency medical services or operates an ambulance;
 - (B) is employed by a political subdivision of the state; and
 - (C) is qualified as an emergency medical technician or at a higher level of training under Section 773.047, 773.048, or 773.049, Health and Safety Code; or
- (14) an individual who is employed or formally designated as a chaplain for:
 - (A) an organized volunteer fire-fighting unit or other fire department of this state or of a political subdivision of this state;

- (B) a law enforcement agency of this state or of a political subdivision of this state;
- or
- (C) the Texas Department of Criminal Justice.

§ 615.004. Effect of Award

(a) A finding that assistance is payable to an eligible survivor of an individual listed under Section 615.003 is not a declaration of the cause, nature, or effect of a death for any other purpose.

(b) A finding that a death is within the provisions of this chapter does not affect another claim or cause of action arising from or connected to the death.

§ 615.005. Assistance not Assignable; Payments Exempt

(a) Assistance payable under this chapter is not transferable or assignable at law or in equity.

(b) Money paid or payable under this chapter is not subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any insolvency law.

§ 615.006. Designation of Custodial Personnel

The Texas Board of Criminal Justice shall adopt and include in its minutes a formal designation identifying the classes of persons who are custodial personnel of the agency so that there is no uncertainty about which persons are custodial personnel.

§ 615.007. Certain Volunteer Fire-Fighting Units Considered Agents of Political Subdivision

For the purposes of this chapter, an organized volunteer fire-fighting unit described by Section 615.003(12) is considered an agent of a political subdivision, including a municipality, county, or district, that the unit serves if:

(1) the unit receives any financial aid from the political subdivision for the maintenance, upkeep, or storage of equipment; or

(2) the governing body of the political subdivision designates the unit as an agent of the political subdivision.

§ 615.008. Certain Police Reserve or Auxiliary Units Considered Agents of Political Subdivision

For the purposes of this chapter, an organized police reserve or auxiliary unit is considered an agent of a political subdivision, including a municipality, county, or district, that the unit serves if the governing body of the political subdivision designates the unit as an agent of the political subdivision.

SUBCHAPTER B. PAYMENTS TO ELIGIBLE SURVIVORS

§ 615.021. Eligible Survivors

(a) A survivor of an individual listed under Section 615.003 is eligible for the payment of assistance under this chapter if:

(1) the listed individual died as a result of a personal injury sustained in the line of duty in the individual's position as described by Section 615.003; and

(2) the survivor is:

(A) the surviving spouse of the listed individual;

(B) a surviving child of the listed individual, if there is no surviving spouse; or;

(C) a dependent parent of the listed individual, if there is no surviving spouse or child.

(b) Payment of assistance may not occur under this subchapter unless an individual is eligible

under Subsection (a).

(c) An individual employed by the state or a political or legal subdivision who is subject to certification by the Texas Commission on Fire Protection or whose principal duties are aircraft crash and rescue fire fighting is considered to have died as a result of a personal injury sustained in the line of duty in the individual's position as described by Section 615.003 if the individual died while actually performing an activity that the individual was certified to perform by the Texas Commission on Fire Protection, without regard to whether the individual was actually performing the activity during the individual's compensable hours at work.

(d) In a determination of whether the survivor of an individual listed under Section 615.003 is eligible for the payment of assistance under this chapter, any reasonable doubt arising from the circumstances of the individual's death shall be resolved in favor of the payment of assistance to the survivor.

(e) In this section:

(1) "Personal injury" means an injury resulting from an external force, an activity, or a disease caused by or resulting from:

(A) a line-of-duty accident; or

(B) an illness caused by line-of-duty work under hazardous conditions.

(2) "Line of duty" means an action an individual listed under Section 615.003 is required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

§ 615.022. Payment to Survivors.

(a) If there is an eligible surviving spouse, the state shall pay \$250,000 to the eligible surviving spouse.

(b) If there is no eligible surviving spouse, the state shall pay \$250,000 in equal shares to surviving children.

(c) If there is no eligible surviving spouse or child, the state shall pay \$250,000 in equal shares to surviving parents.

§ 615.0225. Education Benefits For Certain Survivors.

(a) A person is eligible to receive education benefits under this section if the person is:

(1) a surviving spouse; or

(2) a surviving minor child as defined by Section 615.001.

(b) An eligible person who enrolls as a full-time student at an institution of higher education as defined by Section 61.003, Education Code, is exempt from tuition and fees at that institution of higher education until the student receives a bachelor's degree or 200 hours of course credit, whichever occurs first.

(c) If the student elects to reside in housing provided by the institution of higher education and qualifies to reside in that housing, the institution shall pay from the general revenue appropriated to the institution the cost of the student's contract for food and housing until the student receives a bachelor's degree or 200 hours of course credit, whichever occurs first. If there is no space available in the institution's housing, the institution shall, from the general revenue appropriated to the institution, pay to the student each month the equivalent amount that the institution would have expended had the student lived in the institution's housing. The institution is not required to pay the student the monthly payment if the student would not qualify to live in the institution's housing.

(d) The institution of higher education shall, from the general revenue appropriated to the institution, pay to the student the cost of the student's textbooks until the student receives a bachelor's degree or 200 hours of course credit, whichever occurs first.

(e) A payment under this section is in addition to any payment made under Section 615.022.

SUBCHAPTER C. ADMINISTRATION AND PROCEDURE

§ 615.041. Proof of Claim

Proof of the death of an individual listed under Section 615.003 that is claimed to meet the requirements of Section 615.021(1) shall be furnished to the board of trustees of the Employees Retirement System of Texas in the form and with additional evidence and information required by the board.

§ 615.042. Award and Payment of Assistance

(a) The Employees Retirement System of Texas shall notify the comptroller of the retirement system's determination that a claim under this chapter is valid and justifies payment.

(b) On receipt of the notice, the comptroller shall issue a warrant to each claimant in the proper amount from the fund appropriated for that purpose.

(c) Payments under this chapter on behalf of a surviving child are payable beginning on the first day of the first month after the death of the individual listed in Section 615.003.

§ 615.043. Denial of Claim

If the Employees Retirement System of Texas denies a claim, the retirement system shall send a notice of the denial to:

(1) the person making the claim; or

(2) the duly qualified guardian or legal representative of a surviving minor child, if a claim is being made on behalf of the child or sibling.

§ 615.044. Appeals

(a) An eligible survivor or the eligible survivor's legal representative whose claim for payment is denied or may appeal the denial to the board of trustees of the Employees Retirement System of Texas.

(b) An appeal under this section is considered to be an appeal of a contested case under Chapter 2001 and shall be conducted as provided by Section 815.511.

(c) Judicial review of a decision under this section is under the substantial evidence rule as provided by Chapter 2001.

§ 615.045. Records

(a) Records of individuals listed by Section 615.003 and of survivors eligible for benefits under this chapter that are in the custody of the Employees Retirement System of Texas or a carrier, administering firm as defined by the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-02 Vernon's Texas Insurance Code), or other governmental agency acting with or on behalf of the retirement system are confidential, not subject to public disclosure, and exempt from the public information provisions of Chapter 552, except as otherwise provided by this section.

(b) Records may be released to an eligible survivor or to an authorized attorney, family member, or representative acting on behalf of the eligible survivor. The Employees Retirement System of Texas may release the records to an administering firm, carrier, agent, or attorney acting on behalf of the retirement system, to another governmental entity having a legitimate need for the information to perform the purposes of the retirement system, or to a party in response to a subpoena issued under applicable law.

(c) The records of individuals listed by Section 615.003 and of eligible survivors remain confidential after release to a person as authorized by this section. The records of individuals listed by Section 615.003 and of eligible survivors may become part of the public record of an administrative or judicial proceedings related to an appeal filed under this chapter, unless the records are closed to public access by a protective order issued under applicable law.

SUBCHAPTER D. HEALTH INSURANCE COVERAGE FOR ELIGIBLE SURVIVORS

§ 615.071. Applicability

This subchapter applies only to eligible survivors of:

- (1) an individual listed in Section 615.003(1), (6), or (7); or
- (2) an individual listed in Section 615.003(10) or (11) who is employed by a political subdivision of the state.

§ 615.072. Eligible Survivors

(a) A survivor of an individual listed under Section 615.071 is eligible for the health insurance benefits provided under this subchapter if:

- (1) the listed individual died as a result of a personal injury sustained in the line of duty in the individual's position as described by Section 615.071.
- (2) the survivor is:
 - (A) the surviving spouse of the listed individual; or
 - (B) a dependent of the listed individual.

(b) In a determination of whether the survivor of an individual listed under Section 615.071 is eligible for the payment of assistance under this subchapter, any reasonable doubt arising from the circumstances of the individual's death shall be resolved in favor of the payment of assistance to the survivor.

(c) In this section:

- (1) "Personal injury" means an injury resulting from an external force, an activity, or a disease caused by or resulting from:
 - (A) a line-of-duty accident; or
 - (B) an illness caused by line-of-duty work under hazardous conditions.
- (2) "Line of duty" means an action an individual listed under Section 615.071 is required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

§ 615.073. Benefit to Surviving Spouse

(a) An eligible surviving spouse of a deceased individual listed in Section 615.071 who was employed by the state is entitled to purchase continued health insurance benefits under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50B2, Vernon's Texas Insurance Code), as provided by this subchapter.

- (1) provided by or through a political subdivision under a self-insured health benefits plan; or
- (2) under Chapter 172, Local Government Code.

(b) An eligible surviving spouse of a deceased individual listed in Section 615.071 who was employed by a political subdivision of the state is entitled to purchase continued health insurance benefits from the political subdivision that employed the deceased individual, including health coverage:

- (1) provided by or through a political subdivision under:

- (A) a health insurance policy or health benefit plan written by a health insurer; or
- (B) a self-insured health benefits plan; or
- (2) under Chapter 172, Local Government Code.
- (c) The surviving spouse is entitled to continue to purchase health insurance coverage until the earlier of:
 - (1) the date the surviving spouse remarries;
 - (2) the date the surviving spouse becomes eligible for group health insurance through another employer; or
 - (3) the date the surviving spouse becomes eligible for federal Medicare benefits.

§ 615.074. Benefit to Dependent

- (a) An eligible surviving dependent who is a minor child is entitled to continue health insurance coverage until the earlier or:
 - (1) the day the dependent reaches the age of 18 years; or
 - (2) the date the dependent becomes eligible for group health insurance through another employer.
- (b) An eligible surviving dependent who is not a minor child is entitled to continue health insurance coverage until the earlier of:
 - (1) the date the dependent marries;
 - (2) the date the dependent becomes eligible for group health insurance through another employer; or
 - (3) the date the dependent becomes eligible for federal Medicare benefits.

§ 615.075. Notice

- (a) An employing entity shall provide written notice to an eligible survivor to whom this subchapter may apply of the survivor's rights under this subchapter not later than the 10th day after the date of the decedent's death.
- (b) If an eligible survivor is a minor child, the employing entity shall also, at the same time, provide the notice to the child's parent or guardian, unless, after reasonable effort, the parent or guardian cannot be located.
- (c) To receive continued coverage under this subchapter, the employing entity must be informed not later than the 90th day after the date the decedent died that the eligible survivor elects to continue coverage.

§ 615.076. Level of Coverage

- (a) An eligible survivor may elect to continue coverage at any level of benefits currently offered by the employing entity to dependents of an active employee.
- (b) An eligible survivor may elect to continue coverage at a reduced level of benefits if the employing entity offers that option.

§ 615.077. Payments; Rate

- An eligible survivor who is entitled to continued coverage under this subchapter is entitled to:
- (1) make payments for the coverage or have payments made on the survivor's behalf at the same time and to the same entity that payments for coverage are made by current employees of the employing entity; and
 - (2) purchase the coverage at the group rate for that coverage that exists at the time of payment.

§ 615.078. Certain Practices Not Prohibited or Affected

This subchapter does not:

- (1) prohibit an employing entity from uniformly changing the group health insurance plan or group health coverage plan provided for its employees and employees' dependents;
- (2) affect the definition of a dependent or the eligibility requirements for a dependent under a plan;
- (3) prohibit an employing entity from increasing the cost of group health coverage to its employees and to eligible survivors covered under this subchapter to reflect any increased cost attributable to compliance with this subchapter; or
- (4) affect the right of a political subdivision to self-insure or provide coverage under Chapter 172, Local Government Code.

§ 615.079. Benefits Additional

The benefits provided by this subchapter are in addition to any other benefits provided by this chapter.

SUBCHAPTER E. ADDITIONAL BENEFITS FOR ELIGIBLE SURVIVORS

§ 615.101. Definition

In this subchapter, "governmental entity" includes the state, an agency or institution of the state, or a political subdivision of the state.

§ 615.102. Duty Weapon and Badge

(a) This section applies only to:

- (1) an individual listed in Section 615.003(1) who is employed by a political subdivision of the state;
- (2) a peace officer under Article 2.12, Code of Criminal Procedure, or other law who is employed by the state, including any state agency or any institution of higher education under Section 61.003, Education Code; or
- (3) an individual listed in Section 615.003(7).

(b) On the death of an individual listed in Subsection (a), the employing governmental entity shall provide, at no cost, the deceased individual's duty weapon, if any, and badge to the individual's:

- (1) designated beneficiary; or
- (2) estate if the individual did not designate a beneficiary.

(c) A governmental entity that employs an individual listed in Subsection (a) shall provide the individual a form on which the individual may designate the individual's beneficiaries for purposes of this section.

(d) A governmental entity is not liable for damages caused by the use or misuse of a duty weapon provided to a designated beneficiary or estate under this section.

§ 615.103. Burial with Uniform

(a) This section applies only to:

- (1) an individual listed in Section 615.003(1) who is employed by a political subdivision of the state;
- (2) a peace officer under Article 2.12, Code of Criminal Procedure, or other law who is employed by the state, including any state agency or any institution of higher education under Section 61.003, Education Code;
- (3) an individual listed in Section 615.003(7); or
- (4) an individual listed in Section 615.003(10) or (11) who is employed by a political

subdivision of the state.

(b) If an individual listed in Subsection (a) dies and is to be buried in the individual's uniform, the employing governmental entity shall provide the uniform at no cost.

§ 615.104. Benefits Additional

The benefits provided by this subchapter are in addition to any other benefits provided by this chapter.

SUBCHAPTER F. ADDITIONAL BENEFITS FOR SURVIVOR OF PEACE OFFICER

§ 615.121. Payment to Surviving Spouse.

(a) The state shall pay the following benefits to an eligible surviving spouse of a peace officer or an employee of the institutional division or state jail division of the Texas Department of Criminal Justice, as described by Section 615.003(1) or (6), who was killed in the line of duty and who had not qualified for an annuity under an employees' retirement plan:

- (1) funeral expenses related to the deceased officer or employee; and
- (2) monthly payments that equal the greater of:

(A) the monthly annuity payment the deceased officer or employee would have received if the officer or employee had survived, had retired on the last day of the month in which the officer or employee died, and had been eligible to receive an annuity under an employees' retirement plan; or

(B) the minimum monthly annuity payment the deceased officer or employee would have received if the officer or employee had been employed by the state for 10 years, had been paid a salary at the lowest amount provided by the General Appropriations Act for a position of peace officer or employee of the institutional division or state jail division of the Texas Department of Criminal Justice, as described by Section 615.003(1) or (6), and had been eligible to retire under the Employees Retirement System of Texas.

(b) The surviving spouse is entitled to continue to receive monthly payments under Subsection (a) until the earlier of:

- (1) the date the surviving spouse remarries;
- (2) the date the surviving spouse becomes eligible for retirement under an employees' retirement plan; or
- (3) the date the surviving spouse becomes eligible for Social Security benefits.

(c) The Employees Retirement System of Texas may require the surviving spouse to provide information as necessary to administer this section.

(d) The Employees Retirement System of Texas may adopt rules necessary to administer this section including rules:

- (1) setting the maximum amount of funeral expenses payable under this subchapter; and
- (2) calculating the survivor benefits payable under this subchapter.

(e) The Employees Retirement System of Texas shall apply reduction factors, as applicable to an annuity payable under this section, in the same manner the factors are applied to a death benefit plan administered by the system.

(f) In this section, "line of duty" has the meaning assigned by Section 615.021.

§ 615.122. Payment to Surviving Minor Children.

If an eligible surviving spouse who would be entitled to benefits under Section 615.121 does not

exist but one or more eligible surviving minor children of the deceased peace officer or employee of the institutional division or state jail division of the Texas Department of Criminal Justice, as described by Section 615.003(1) or (6), do exist, the state shall pay to the guardian or other legal representative of those children the funeral expenses of the deceased officer or employee.

§ 615.123. Benefits Additional.

The benefits provided by this subchapter are in addition to any other benefits provided by this chapter.

§ 811.001. DEFINITIONS

(12) "Occupational disability" means disability from an injury or disease that directly results from a specific act or occurrence determinable by a definite time and place, and directly results from a risk or a hazard peculiar to and inherent in a duty that arises from and in the course of state employment.

(12-a) "Occupational death" means death from an injury resulting from an external force, an activity, or a disease caused by or resulting from a line-of-duty accident or from an illness caused by line-of-duty work under hazardous conditions. The term includes death from accidents or illnesses that directly result from an action a person is required or authorized by rule, condition of employment, or law to perform, including an action performed by the person at a social, ceremonial, athletic, or other function to which the person is assigned by the person's employer.

CHAPTER 617. COLLECTIVE BARGAINING AND STRIKES

617.001. Definition

617.002. Collective Bargaining by Public Employees Prohibited

617.003. Prohibition on Strikes by Public Employees

617.004. Right to Work

617.005. Effect of Chapter

CHAPTER 617. COLLECTIVE BARGAINING AND STRIKES

§ 617.001. Definition

In this chapter, "labor organization" means any organization in which employees participate and that exists in whole or in part to deal with one or more employers concerning grievances, labor disputes, wages, hours of employment, or working conditions.

§ 617.002. Collective Bargaining by Public Employees Prohibited

(a) An official of the state or of a political subdivision of the state may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of public employees.

(b) A contract entered into in violation of Subsection (a) is void.

(c) An official of the state or of a political subdivision of the state may not recognize a labor organization as the bargaining agent for a group of public employees.

§ 617.003. Prohibition on Strikes by Public Employees

(a) Public employees may not strike or engage in an organized work stoppage against the state or a political subdivision of the state.

(b) A public employee who violates Subsection (a) forfeits all civil service rights, reemployment rights, and any other rights, benefits, and privileges the employee enjoys as a result of public employment or former public employment.

(c) The right of an individual to cease work may not be abridged if the individual is not acting in concert with others in an organized work stoppage.

§ 617.004. Right to Work

An individual may not be denied public employment because of the individual's membership or non-membership in a labor organization.

§ 617.005. Effect of Chapter

This chapter does not impair the right of public employees to present grievances concerning their wages, hours of employment, or conditions of work either individually or through a representative that does not claim the right to strike.

TRANSPORTATION CODE

Chapter 552, Transportation Code

§ 552.0071. LOCAL AUTHORIZATION FOR SOLICITATION BY PEDESTRIAN

(a) A local authority shall grant authorization for a person to stand in a roadway to solicit a charitable contribution as provided by Section 552.007(a) if the persons to be engaged in the solicitation are employees or agents of the local authority and the other requirements of this section are met.

(b) A person seeking authorization under this section shall file a written application with the local authority not later than the 11th day before the date the solicitation is to begin. The application must include:

- (1) the date or dates and times when the solicitation is to occur;
- (2) each location at which solicitation is to occur; and
- (3) the number of solicitors to be involved in solicitation at each location.

(c) This section does not prohibit a local authority from requiring a permit or the payment of reasonable fees to the local authority.

(d) The applicant shall also furnish to the local authority advance proof of liability insurance in the amount of at least \$1 million to cover damages that may arise from the solicitation. The insurance must provide coverage against claims against the applicant and claims against the local authority.

(e) A local authority, by acting under this section or Section 552.007, does not waive or limit any immunity from liability applicable under law to the local authority. The issuance of an authorization under this section and the conducting of the solicitation authorized is a governmental function of the local authority.

(f) Notwithstanding any provision of this section, the existing rights of individuals or organizations under Section 552.007 are not impaired.

(g) For purposes of a solicitation under Subsection (a), a roadway is defined to include the roadbed, shoulder, median, curbs, safety zones, sidewalks, and utility easements located adjacent to or near the roadway.