

By: Woolley

H.B. No. 3352

A BILL TO BE ENTITLED

1 AN ACT

2 relating to municipal civil service for firefighters and police  
3 officers in certain municipalities.

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

5 SECTION 1. Section 143.057(d), Local Government Code, is  
6 amended to read as follows:

7 (d) If the appealing fire fighter or police officer chooses  
8 to appeal to a hearing examiner, the fire fighter or police officer  
9 and the department head, or their designees, shall first attempt to  
10 agree on the selection of an impartial hearing examiner. If the  
11 parties do not agree on the selection of a hearing examiner on or  
12 within 10 days after the date the appeal is filed, the director  
13 shall immediately request a list of seven qualified neutral  
14 independent third party hearing examiners [~~arbitrators~~] from the  
15 American Arbitration Association or the Federal Mediation and  
16 Conciliation Service, or their successors in function. The fire  
17 fighter or police officer and the department head, or their  
18 designees, may agree on one of the seven neutral independent third  
19 party hearing examiners [~~arbitrators~~] on the list. If they do not  
20 agree within five working days after the date they received the  
21 list, each party or the party's designee shall alternate striking a  
22 name from the list and the name remaining is the hearing examiner.  
23 The parties or their designees shall agree on a date for the  
24 hearing.

1 SECTION 2. Sections 143.1015(e), (f), and (i), Local  
2 Government Code, are amended to read as follows:

3 (e) The hearing relating to the reasons for the fire  
4 fighter's or police officer's subpoena request shall be held on the  
5 date set for the original appeal hearing. If the commission  
6 overrules the subpoena request at the hearing:

7 (1) the commission may hear the fire fighter's or  
8 police officer's appeal on that date; or

9 (2) if the commission finds that justice is served by a  
10 continuance, the commission shall:

11 (A) reschedule the hearing to the commission's  
12 next regularly scheduled meeting; and

13 (B) give the fire fighter or police officer at  
14 least 15 days notice of that date.

15 (f) If the commission sustains the fire fighter's or police  
16 officer's subpoena request at the hearing, the commission shall:

17 (1) reschedule the appeal hearing date to the  
18 commission's next regularly scheduled meeting; and

19 (2) give the fire fighter or police officer at least 15  
20 days notice of that date.

21 (i) A municipal employee who is subpoenaed to appear as a  
22 fact witness in any appeal of a disciplinary decision is entitled to  
23 applicable pay for the time the employee is required to be present  
24 at the hearing. Witnesses whose testimony relates primarily to the  
25 character or reputation of the employee shall be limited by the  
26 hearing examiner or commission if the testimony is repetitious or  
27 unduly prolongs the hearing. If the hearing examiner or commission

1 limits the number of character or reputation witnesses, additional  
2 witness statements may be presented by affidavit. The character  
3 witnesses are not entitled to applicable pay for the time they are  
4 required to be present at the hearing.

5 SECTION 3. Section 143.1016, Local Government Code, is  
6 amended by amending Subsections (a), (d), (e), (h), and (k) and  
7 adding Subsection (l) to read as follows:

8 (a) In addition to the other notice requirements prescribed  
9 by this chapter, the letter of disciplinary action issued to a fire  
10 fighter or police officer must state that in an appeal of an  
11 indefinite suspension, a suspension, a promotional pass over, or a  
12 recommended demotion, the appealing fire fighter or police officer  
13 may elect to appeal to a [~~an independent third party~~] hearing  
14 examiner instead of to the commission. The hearing examiner must be  
15 an independent third party hearing examiner. The letter must also  
16 state that if the fire fighter or police officer elects to appeal to  
17 a hearing examiner, the person waives all rights to appeal to a  
18 district court except as provided by Subsection (j).

19 (d) This subsection applies only if the parties have not  
20 established a selection procedure in an agreement pursuant to  
21 Subchapter J. If the appealing fire fighter or police officer  
22 chooses to appeal to a hearing examiner, the fire fighter or police  
23 officer and the department head or their designees shall first  
24 attempt to agree on the selection of an impartial hearing examiner.  
25 If the parties do not agree on the selection of a hearing examiner  
26 on or within 10 days after the date the appeal is filed and no motion  
27 to consolidate is filed under Subsection (l) [~~(k) of this section~~],

1 the director shall on the next work day following notice that the  
2 parties have failed to agree on a selection of a hearing examiner  
3 request a list of seven qualified neutral hearing examiners  
4 [~~arbitrators~~] from the American Arbitration Association or the  
5 Federal Mediation and Conciliation Service or their successors in  
6 function. The fire fighter or police officer and the department  
7 head or their designees may agree on one of the seven neutral  
8 hearing examiners [~~arbitrators~~] on the list. If they do not agree  
9 within 25 days after the date the appeal was filed, each party or  
10 the party's designee shall on the 25th day after the appeal was  
11 filed alternate striking a name from the list and the name remaining  
12 is the hearing examiner. In the event that the 25th day falls on a  
13 Saturday, Sunday, or a legal holiday, then the parties shall strike  
14 the list the next work day. The parties or their designees shall  
15 agree on a date for the hearing that is within the time period  
16 prescribed by Subsection (e). In the event that the director does  
17 not request the list of seven qualified neutral hearing examiners  
18 [~~arbitrators~~] within the time prescribed by this subsection or the  
19 department head or his designee fails to strike the list within the  
20 time prescribed by this subsection, the fire fighter or police  
21 officer or his designee shall select the hearing examiner  
22 [~~arbitrator~~] from the list provided. In the event that the fire  
23 fighter or police officer or his designee fails to strike the list  
24 within the time prescribed by this subsection, the department head  
25 or his designee shall select the hearing examiner [~~arbitrator~~] from  
26 the list provided.

27 (e) The appeal hearing must begin within 60 days after the

1 date the appeal is filed and shall begin as soon as the hearing  
2 examiner can be scheduled. If the hearing examiner cannot begin the  
3 hearing within 45 calendar days after the date of selection, the  
4 fire fighter or police officer may, within two days after learning  
5 of that fact, call for the selection of a new hearing examiner using  
6 the procedure prescribed by Subsection (d) or a procedure  
7 established in an agreement pursuant to Subchapter J. If the appeal  
8 hearing is not begun within 60 days after the date the appeal is  
9 filed, the indefinite suspension, suspension, promotional pass  
10 over, or recommended demotion is upheld and the appeal is withdrawn  
11 if the fire fighter or police officer is not ready to proceed, and  
12 the appeal is sustained if the department head is not ready to  
13 proceed. In computing the 60-day period, a period of delay not to  
14 exceed 30 calendar days because of a continuance granted at the  
15 request of the department head or his representative or the fire  
16 fighter or police officer or his representative on good cause being  
17 shown, or because of the unavoidable unavailability of the hearing  
18 examiner on the date of the hearing, or because of the pendency of a  
19 motion to consolidate with another hearing as provided in  
20 Subsection (1) [~~(k) of this section~~] is excluded. In no event may a  
21 hearing examiner grant a continuance beyond 30 days in an  
22 indefinite suspension. A hearing examiner may grant a continuance  
23 beyond the 30-day period upon good cause being shown in a  
24 disciplinary suspension unless the fire fighter or police officer  
25 has another disciplinary action pending.

26 (h) In an appeal that does not involve an expedited hearing  
27 procedure, the hearing examiner shall make a reasonable effort to

1 render a decision on the appeal within 30 days after the date the  
2 hearing ends or the legal briefs are filed. The hearing examiner's  
3 inability to meet the time requirements imposed by this section  
4 does not affect the hearing examiner's jurisdiction, the validity  
5 of the disciplinary action, or the hearing examiner's final  
6 decision.

7 (k) In an appeal of an indefinite suspension, a suspension,  
8 a promotional pass over, or a recommended demotion, each appealing  
9 fire fighter or police officer or the appealing fire fighter's or  
10 police officer's representative shall be entitled to the selection  
11 of a hearing examiner to hear the case:

12 (1) pursuant to Subsection (d); or

13 (2) in accordance with a procedure established in an  
14 agreement pursuant to Subchapter J [~~of this section to hear the~~  
15 ~~case~~].

16 (1) The fire fighter, police officer, department head, or a  
17 representative of any of those may, within 10 days of the date they  
18 received notice of the appeal, file a motion with a copy to the  
19 opposing side to consolidate the case with that of one or more other  
20 fire fighters or police officers where the charges arise out of the  
21 same incident. The motion to consolidate may be agreed to in  
22 writing and filed with the director. If a motion to consolidate the  
23 cases is filed and not agreed to, a hearing examiner shall be chosen  
24 to hear the motion pursuant to the provisions of Subsection (d) or  
25 in accordance with a procedure established in an agreement pursuant  
26 to Subchapter J [~~of this section to hear the motion~~]. The decision  
27 of the hearing examiner shall be final and binding as to the issue

1 of consolidation. The hearing examiner chosen to hear the motion to  
2 consolidate shall not hear the case, and the provisions of  
3 Subsection (d) or of a selection procedure established in an  
4 agreement pursuant to Subchapter J [~~of this section~~] shall be used  
5 to choose the hearing examiner with the day the decision is rendered  
6 being the equivalent of the date the appeal was filed.

7 SECTION 4. The changes in law made by this Act to Sections  
8 143.057(d), 143.1015, and 143.1016, Local Government Code, apply  
9 only to an appeal initiated by a firefighter or police officer on or  
10 after the effective date of this Act. An appeal initiated before  
11 the effective date of this Act is governed by the law in effect  
12 immediately before the effective date of this Act, and the former  
13 law is continued in effect for that purpose.

14 SECTION 5. This Act takes effect September 1, 2007.