

1-1 By: Woolley (Senate Sponsor - Whitmire) H.B. No. 3352
1-2 (In the Senate - Received from the House April 26, 2007;
1-3 April 27, 2007, read first time and referred to Committee on
1-4 Criminal Justice; May 11, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 May 11, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3352 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to municipal civil service for firefighters and police
1-11 officers in certain municipalities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 143.025, Local Government Code, is
1-14 amended by adding Subsection (k) to read as follows:

1-15 (k) This section does not apply to a police department
1-16 located in a municipality with a population of 1.5 million or more.

1-17 SECTION 2. Section 143.057(d), Local Government Code, is
1-18 amended to read as follows:

1-19 (d) If the appealing fire fighter or police officer chooses
1-20 to appeal to a hearing examiner, the fire fighter or police officer
1-21 and the department head, or their designees, shall first attempt to
1-22 agree on the selection of an impartial hearing examiner. If the
1-23 parties do not agree on the selection of a hearing examiner on or
1-24 within 10 days after the date the appeal is filed, the director
1-25 shall immediately request a list of seven qualified neutral
1-26 independent third party hearing examiners [~~arbitrators~~] from the
1-27 American Arbitration Association or the Federal Mediation and
1-28 Conciliation Service, or their successors in function. The fire
1-29 fighter or police officer and the department head, or their
1-30 designees, may agree on one of the seven neutral independent third
1-31 party hearing examiners [~~arbitrators~~] on the list. If they do not
1-32 agree within five working days after the date they received the
1-33 list, each party or the party's designee shall alternate striking a
1-34 name from the list and the name remaining is the hearing examiner.
1-35 The parties or their designees shall agree on a date for the
1-36 hearing.

1-37 SECTION 3. Sections 143.1015(e), (f), and (i), Local
1-38 Government Code, are amended to read as follows:

1-39 (e) The hearing relating to the reasons for the fire
1-40 fighter's or police officer's subpoena request shall be held on the
1-41 date set for the original appeal hearing. If the commission
1-42 overrules the subpoena request at the hearing:

1-43 (1) the commission may hear the fire fighter's or
1-44 police officer's appeal on that date; or

1-45 (2) if the commission finds that justice is served by a
1-46 continuance, the commission shall:

1-47 (A) reschedule the hearing to the commission's
1-48 next regularly scheduled meeting; and

1-49 (B) give the fire fighter or police officer at
1-50 least 15 days notice of that date.

1-51 (f) If the commission sustains the fire fighter's or police
1-52 officer's subpoena request at the hearing, the commission shall:

1-53 (1) reschedule the appeal hearing date to the
1-54 commission's next regularly scheduled meeting; and

1-55 (2) give the fire fighter or police officer at least 15
1-56 days notice of that date.

1-57 (i) A municipal employee who is subpoenaed to appear as a
1-58 fact witness in any appeal of a disciplinary decision is entitled to
1-59 applicable pay for the time the employee is required to be present
1-60 at the hearing. Witnesses whose testimony relates primarily to the
1-61 character or reputation of the employee shall be limited by the
1-62 hearing examiner or commission if the testimony is repetitious or
1-63 unduly prolongs the hearing. If the hearing examiner or commission

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

2-5 SECTION 4. Section 143.1016, Local Government Code, is
 2-6 amended by amending Subsections (a), (d), (e), (h), and (k) and
 2-7 adding Subsection (l) to read as follows:

2-8 (a) In addition to the other notice requirements prescribed
 2-9 by this chapter, the letter of disciplinary action issued to a fire
 2-10 fighter or police officer must state that in an appeal of an
 2-11 indefinite suspension, a suspension, a promotional pass over, or a
 2-12 recommended demotion, the appealing fire fighter or police officer
 2-13 may elect to appeal to a ~~[an independent third party]~~ hearing
 2-14 examiner instead of to the commission. The hearing examiner must be
 2-15 an independent third party hearing examiner. The letter must also
 2-16 state that if the fire fighter or police officer elects to appeal to
 2-17 a hearing examiner, the person waives all rights to appeal to a
 2-18 district court except as provided by Subsection (j).

2-19 (d) This subsection applies only if the parties have not
 2-20 established a selection procedure in an agreement pursuant to
 2-21 Subchapter J. If the appealing fire fighter or police officer
 2-22 chooses to appeal to a hearing examiner, the fire fighter or police
 2-23 officer and the department head or their designees shall first
 2-24 attempt to agree on the selection of an impartial hearing examiner.
 2-25 If the parties do not agree on the selection of a hearing examiner
 2-26 on or within 10 days after the date the appeal is filed and no motion
 2-27 to consolidate is filed under Subsection (l) ~~[(k) of this section]~~,
 2-28 the director shall on the next work day following notice that the
 2-29 parties have failed to agree on a selection of a hearing examiner
 2-30 request a list of seven qualified neutral hearing examiners
 2-31 ~~[arbitrators]~~ from the American Arbitration Association or the
 2-32 Federal Mediation and Conciliation Service or their successors in
 2-33 function. The fire fighter or police officer and the department
 2-34 head or their designees may agree on one of the seven neutral
 2-35 hearing examiners ~~[arbitrators]~~ on the list. If they do not agree
 2-36 within 25 days after the date the appeal was filed, each party or
 2-37 the party's designee shall on the 25th day after the appeal was
 2-38 filed alternate striking a name from the list and the name remaining
 2-39 is the hearing examiner. In the event that the 25th day falls on a
 2-40 Saturday, Sunday, or a legal holiday, then the parties shall strike
 2-41 the list the next work day. The parties or their designees shall
 2-42 agree on a date for the hearing that is within the time period
 2-43 prescribed by Subsection (e). In the event that the director does
 2-44 not request the list of seven qualified neutral hearing examiners
 2-45 ~~[arbitrators]~~ within the time prescribed by this subsection or the
 2-46 department head or his designee fails to strike the list within the
 2-47 time prescribed by this subsection, the fire fighter or police
 2-48 officer or his designee shall select the hearing examiner
 2-49 ~~[arbitrator]~~ from the list provided. In the event that the fire
 2-50 fighter or police officer or his designee fails to strike the list
 2-51 within the time prescribed by this subsection, the department head
 2-52 or his designee shall select the hearing examiner ~~[arbitrator]~~ from
 2-53 the list provided.

2-54 (e) The appeal hearing must begin within 60 days after the
 2-55 date the appeal is filed and shall begin as soon as the hearing
 2-56 examiner can be scheduled. If the hearing examiner cannot begin the
 2-57 hearing within 45 calendar days after the date of selection, the
 2-58 fire fighter or police officer may, within two days after learning
 2-59 of that fact, call for the selection of a new hearing examiner using
 2-60 the procedure prescribed by Subsection (d) or a procedure
 2-61 established in an agreement pursuant to Subchapter J. If the appeal
 2-62 hearing is not begun within 60 days after the date the appeal is
 2-63 filed, the indefinite suspension, suspension, promotional pass
 2-64 over, or recommended demotion is upheld and the appeal is withdrawn
 2-65 if the fire fighter or police officer is not ready to proceed, and
 2-66 the appeal is sustained if the department head is not ready to
 2-67 proceed. In computing the 60-day period, a period of delay not to
 2-68 exceed 30 calendar days because of a continuance granted at the
 2-69 request of the department head or his representative or the fire

3-1 fighter or police officer or his representative on good cause being
 3-2 shown, or because of the unavoidable unavailability of the hearing
 3-3 examiner on the date of the hearing, or because of the pendency of a
 3-4 motion to consolidate with another hearing as provided in
 3-5 Subsection (1) [~~(k) of this section~~] is excluded. In no event may a
 3-6 hearing examiner grant a continuance beyond 30 days in an
 3-7 indefinite suspension. A hearing examiner may grant a continuance
 3-8 beyond the 30-day period upon good cause being shown in a
 3-9 disciplinary suspension unless the fire fighter or police officer
 3-10 has another disciplinary action pending.

3-11 (h) In an appeal that does not involve an expedited hearing
 3-12 procedure, the hearing examiner shall make a reasonable effort to
 3-13 render a decision on the appeal within 30 days after the date the
 3-14 hearing ends or the legal briefs are filed. The hearing examiner's
 3-15 inability to meet the time requirements imposed by this section
 3-16 does not affect the hearing examiner's jurisdiction, the validity
 3-17 of the disciplinary action, or the hearing examiner's final
 3-18 decision.

3-19 (k) In an appeal of an indefinite suspension, a suspension,
 3-20 a promotional pass over, or a recommended demotion, each appealing
 3-21 fire fighter or police officer or the appealing fire fighter's or
 3-22 police officer's representative shall be entitled to the selection
 3-23 of a hearing examiner to hear the case:

3-24 (1) pursuant to Subsection (d); or

3-25 (2) in accordance with a procedure established in an
 3-26 agreement pursuant to Subchapter J [~~of this section to hear the~~
 3-27 ~~case~~].

3-28 (1) The fire fighter, police officer, department head, or a
 3-29 representative of any of those may, within 10 days of the date they
 3-30 received notice of the appeal, file a motion with a copy to the
 3-31 opposing side to consolidate the case with that of one or more other
 3-32 fire fighters or police officers where the charges arise out of the
 3-33 same incident. The motion to consolidate may be agreed to in
 3-34 writing and filed with the director. If a motion to consolidate the
 3-35 cases is filed and not agreed to, a hearing examiner shall be chosen
 3-36 to hear the motion pursuant to the provisions of Subsection (d) or
 3-37 in accordance with a procedure established in an agreement pursuant
 3-38 to Subchapter J [~~of this section to hear the motion~~]. The decision
 3-39 of the hearing examiner shall be final and binding as to the issue
 3-40 of consolidation. The hearing examiner chosen to hear the motion to
 3-41 consolidate shall not hear the case, and the provisions of
 3-42 Subsection (d) or of a selection procedure established in an
 3-43 agreement pursuant to Subchapter J [~~of this section~~] shall be used
 3-44 to choose the hearing examiner with the day the decision is rendered
 3-45 being the equivalent of the date the appeal was filed.

3-46 SECTION 5. Subchapter G, Chapter 143, Local Government
 3-47 Code, is amended by adding Section 143.1041 to read as follows:

3-48 Sec. 143.1041. ENTRANCE EXAMINATION FOR BEGINNING PEACE
 3-49 OFFICER POSITION IN POLICE DEPARTMENT. (a) In this section,
 3-50 "police officer training academy" means a police officer training
 3-51 academy operated or sponsored by a municipality to which this
 3-52 section applies.

3-53 (b) The commission shall provide for open, competitive, and
 3-54 free entrance examinations to provide eligibility lists for
 3-55 beginning peace officer positions in the police department. The
 3-56 examinations are open to each person who:

3-57 (1) makes a proper application;

3-58 (2) has been admitted to or is enrolled in a police
 3-59 officer training academy as an academy trainee; and

3-60 (3) meets the requirements prescribed by this chapter.

3-61 (c) The entrance examination may be administered to
 3-62 examinees only after the examinees are admitted to a police officer
 3-63 training academy and before the examinees graduate from the
 3-64 academy.

3-65 (d) An eligibility list for a beginning peace officer
 3-66 position in the police department may be created only as a result of
 3-67 the examination. Except as provided by Subsection (f), the
 3-68 examination must be held in the presence of each examinee. The
 3-69 examination must be based on the examinee's general knowledge and

4-1 aptitude and must inquire into the examinee's general education and
4-2 mental ability. A person may not be appointed to the police
4-3 department except as a result of the examination.

4-4 (e) An examinee may not take an examination unless at least
4-5 one other examinee taking the examination is present.

4-6 (f) An entrance examination for beginning peace officer
4-7 positions in the police department must be held at one or more
4-8 locations in the municipality in which the police department is
4-9 located and may be held at additional locations outside the
4-10 municipality. An examination held at multiple locations must be
4-11 administered on the same day and at the same time at each location
4-12 at which it is given. To create one eligibility list, each member
4-13 of a police officer training academy class shall take the
4-14 examination at the same time and each examinee who takes that
4-15 examination shall:

4-16 (1) take the same examination; and

4-17 (2) be examined in the presence of other examinees.

4-18 (g) An additional five points shall be added to the
4-19 examination grade of an examinee who:

4-20 (1) served in the United States armed forces;

4-21 (2) received an honorable discharge from that service;

4-22 and

4-23 (3) made a passing grade on the examination.

4-24 (h) The grade to be placed on the eligibility list for each
4-25 examinee shall be computed by adding an examinee's points under
4-26 Subsection (g), if any, to the examinee's grade on the written
4-27 examination. Each examinee's grade on the written examination is
4-28 based on a maximum grade of 100 percent and is determined entirely
4-29 by the correctness of the examinee's answers to the questions. The
4-30 minimum passing grade on the examination is 70 percent. An examinee
4-31 must pass the examination to be placed on an eligibility list.

4-32 SECTION 6. Section 143.105, Local Government Code, is
4-33 amended to read as follows:

4-34 Sec. 143.105. ELIGIBILITY FOR BEGINNING POSITION IN POLICE
4-35 DEPARTMENT. In addition to meeting the eligibility requirements
4-36 prescribed by Section 143.023, to be certified as eligible for a
4-37 beginning position with a police department, a person must [+]

4-38 [~~(1)~~] be at least 21 years of age at the end of the
4-39 probationary period and have: [+]

4-40 (1) [~~(2)~~ have] served in the United States armed
4-41 forces and received an honorable discharge; [~~or~~]

4-42 (2) [~~(3)~~ have] earned at least 60 hours' credit in any
4-43 area of study at an accredited college or university; or

4-44 (3) been employed full-time for at least five years as
4-45 a peace officer licensed by:

4-46 (A) the Commission on Law Enforcement Officer
4-47 Standards and Education; or

4-48 (B) an acceptable licensing entity in another
4-49 state that has law enforcement officer licensing requirements
4-50 substantially equivalent to those of Chapter 1701, Occupations
4-51 Code.

4-52 SECTION 7. Section 143.352(2), Local Government Code, is
4-53 amended to read as follows:

4-54 (2) "Police employee group" means an organization:

4-55 (A) in which at least three percent of the police
4-56 officers of the municipality participate [~~and pay dues via~~
4-57 ~~automatic payroll deduction~~]; and

4-58 (B) which exists for the purpose, in whole or
4-59 part, of dealing with the municipality concerning grievances, labor
4-60 disputes, wages, rates of pay, benefits other than pension
4-61 benefits, hours of employment, or conditions of work affecting
4-62 police officers.

4-63 SECTION 8. Subchapter J, Chapter 143, Local Government
4-64 Code, is amended by adding Section 143.355 to read as follows:

4-65 Sec. 143.355. AUTOMATIC PAYROLL DEDUCTION OF POLICE
4-66 EMPLOYEE GROUP DUES. A public employer that has recognized a police
4-67 employee group as the sole and exclusive bargaining agent under
4-68 Section 143.354 shall deduct police employee group dues via
4-69 automatic payroll deduction for members of the employee group that

5-1 has been recognized as the bargaining agent. Automatic payroll
5-2 deduction for members of other police employee groups may be
5-3 authorized by agreement between the chief executive officer of the
5-4 public employer and the recognized bargaining agent.

5-5 SECTION 9. The changes in law made by this Act to Sections
5-6 143.057(d), 143.1015, and 143.1016, Local Government Code, apply
5-7 only to an appeal initiated by a firefighter or police officer on or
5-8 after the effective date of this Act. An appeal initiated before
5-9 the effective date of this Act is governed by the law in effect
5-10 immediately before the effective date of this Act, and the former
5-11 law is continued in effect for that purpose.

5-12 SECTION 10. Section 143.1041, Local Government Code, as
5-13 added by this Act, and the changes in law made by this Act to Section
5-14 143.025, Local Government Code, apply only to an examination
5-15 administered for a position as a beginning peace officer on or after
5-16 the effective date of this Act. An examination administered before
5-17 the effective date of this Act and matters dependent on the
5-18 examination are governed by the law in effect at the time the
5-19 examination was administered, and the prior law is continued in
5-20 effect for this purpose.

5-21 SECTION 11. The change in law made by this Act to Section
5-22 143.105, Local Government Code, applies only to a certification of
5-23 eligibility for a beginning position in a police department that
5-24 occurs on or after the effective date of this Act.

5-25 SECTION 12. This Act takes effect September 1, 2007.

5-26 * * * * *