

By: Whitmire

S.B. No. 1718

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. Section 143.1014, Local Government Code, is  
2 amended to read as follows:

3 Sec. 143.1014. NOTICE REQUIREMENT FOR CERTAIN MEETINGS OR  
4 HEARINGS. (a) The department shall provide to a fire fighter or  
5 police officer written notice of the time and location of a meeting  
6 or hearing not later than the 48th hour before the hour on which the  
7 meeting or hearing is held if the meeting or hearing is:

8 (1) related to an internal departmental or other  
9 municipal investigation of the fire fighter or police officer at  
10 which the fire fighter or police officer is required or entitled to  
11 be present, including an interrogation;

12 (2) related to a grievance filed by the fire fighter or  
13 police officer under Sections 143.127 through 143.134; or

14 (3) an opportunity to respond to charges against the  
15 fire fighter or police officer before the department terminates the  
16 fire fighter's or police officer's employment.

17 (b) A fire fighter or police officer may waive the written  
18 notice prescribed by this section.

19 SECTION 3. Sections 143.1015(a), (e), (f), and (i), Local  
20 Government Code, are amended to read as follows:

21 (a) A written notice of [~~An~~] appeal by a fire fighter or  
22 police officer to the commission from an action for which an appeal  
23 or review is provided by this chapter is sufficient if the fire  
24 fighter or police officer files it with the commission within 15  
25 days after the date the action occurred. In an appeal provided by  
26 this chapter the commission shall render a decision in writing  
27 within 60 days after it received the written notice of appeal,

1 unless the provisions of Section 143.1017(d) have been invoked by  
2 the fire fighter or police officer. If the commission does not  
3 render a decision in writing within 60 days after the date it  
4 receives written notice of the appeal, the commission shall sustain  
5 the fire fighter's or police officer's appeal.

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

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

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

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

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

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

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

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

24 (i) A municipal employee who is subpoenaed to appear as a  
25 fact witness in any appeal of a disciplinary decision is entitled to  
26 applicable pay for the time the employee is required to be present  
27 at the hearing. Witnesses whose testimony relates primarily to the

1 character or reputation of the employee shall be limited by the  
2 hearing examiner or commission if the testimony is repetitious or  
3 unduly prolongs the hearing. If the hearing examiner or commission  
4 limits the number of character or reputation witnesses, additional  
5 witness statements may be presented by affidavit. The character  
6 witnesses are not entitled to applicable pay for the time they are  
7 required to be present at the hearing.

8 SECTION 4. Section 143.1016, Local Government Code, is  
9 amended by amending Subsections (a), (d), (e), (h), (i), and (k) and  
10 adding Subsection (l) to read as follows:

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

22 (d) This subsection applies only if the parties have not  
23 established a selection procedure in an agreement pursuant to  
24 Subchapter J. If the appealing fire fighter or police officer  
25 chooses to appeal to a hearing examiner, the fire fighter or police  
26 officer and the department head or their designees shall first  
27 attempt to agree on the selection of an impartial hearing examiner.

1 If the parties do not agree on the selection of a hearing examiner  
2 on or within 10 days after the date the appeal is filed and no motion  
3 to consolidate is filed under Subsection (1) [~~(k) of this section~~],  
4 the director shall on the next work day following notice that the  
5 parties have failed to agree on a selection of a hearing examiner  
6 request a list of seven qualified neutral hearing examiners  
7 [~~arbitrators~~] from the American Arbitration Association or the  
8 Federal Mediation and Conciliation Service or their successors in  
9 function. The fire fighter or police officer and the department  
10 head or their designees may agree on one of the seven neutral  
11 hearing examiners [~~arbitrators~~] on the list. If they do not agree  
12 within 25 days after the date the appeal was filed, each party or  
13 the party's designee shall on the 25th day after the appeal was  
14 filed alternate striking a name from the list and the name remaining  
15 is the hearing examiner. In the event that the 25th day falls on a  
16 Saturday, Sunday, or a legal holiday, then the parties shall strike  
17 the list the next work day. The parties or their designees shall  
18 agree on a date for the hearing that is within the time period  
19 prescribed by Subsection (e). In the event that the director does  
20 not request the list of seven qualified neutral hearing examiners  
21 [~~arbitrators~~] within the time prescribed by this subsection or the  
22 department head or his designee fails to strike the list within the  
23 time prescribed by this subsection, the fire fighter or police  
24 officer or his designee shall select the hearing examiner  
25 [~~arbitrator~~] from the list provided. In the event that the fire  
26 fighter or police officer or his designee fails to strike the list  
27 within the time prescribed by this subsection, the department head

1 or his designee shall select the hearing examiner [~~arbitrator~~] from  
2 the list provided.

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

1 has another disciplinary action pending.

2 (h) In an appeal that does not involve an expedited hearing  
3 procedure, the hearing examiner shall make a reasonable effort to  
4 render a decision on the appeal within 30 days after the date the  
5 hearing ends or the legal briefs are filed. The hearing examiner's  
6 inability to meet the time requirements imposed by this section  
7 does not affect the hearing examiner's jurisdiction, the validity  
8 of the disciplinary action, or the hearing examiner's final  
9 decision.

10 (i) The hearing examiner's fees and expenses are shared  
11 equally by the appealing fire fighter or police officer and by the  
12 department. The costs associated with the service of a subpoena on  
13 ~~[of]~~ a witness must be ~~[are]~~ paid by the party who calls the  
14 witness.

15 (k) In an appeal of an indefinite suspension, a suspension,  
16 a promotional pass over, or a recommended demotion, each appealing  
17 fire fighter or police officer or the appealing fire fighter's or  
18 police officer's representative shall be entitled to the selection  
19 of a hearing examiner pursuant to Subsection (d) ~~[of this section]~~  
20 to hear the case.

21 (l) The fire fighter, police officer, department head, or a  
22 representative of any of those may, within 10 days of the date they  
23 received notice of the appeal, file a motion with a copy to the  
24 opposing side to consolidate the case with that of one or more other  
25 fire fighters or police officers where the charges arise out of the  
26 same incident. The motion to consolidate may be agreed to in  
27 writing and filed with the director. If a motion to consolidate the

1 cases is filed and not agreed to, a hearing examiner shall be chosen  
2 pursuant to the provisions of Subsection (d) [~~of this section~~] to  
3 hear the motion. The decision of the hearing examiner shall be  
4 final and binding as to the issue of consolidation. The hearing  
5 examiner chosen to hear the motion to consolidate shall not hear the  
6 case, and the provisions of Subsection (d) [~~of this section~~] shall  
7 be used to choose the hearing examiner with the day the decision is  
8 rendered being the equivalent of the date the appeal was filed.

9 SECTION 5. Section 143.361(b), Local Government Code, is  
10 amended to read as follows:

11 (b) A written agreement ratified under this subchapter  
12 preempts all contrary local ordinances, executive orders,  
13 legislation, or rules adopted by [~~the state or~~] a political  
14 subdivision or agent of the state, such as a personnel board, a  
15 civil service commission, or a home-rule municipality.

16 SECTION 6. The changes in law made by this Act to Sections  
17 143.057(d), 143.1015, and 143.1016, Local Government Code, apply  
18 only to an appeal initiated by a firefighter or police officer on or  
19 after the effective date of this Act. An appeal initiated before  
20 the effective date of this Act is governed by the law in effect  
21 immediately before the effective date of this Act, and the former  
22 law is continued in effect for that purpose.

23 SECTION 7. The change in law made by this Act to Section  
24 143.1014, Local Government Code, applies to a notice required to be  
25 provided under that section on or after the effective date of this  
26 Act. A notice required to be provided before the effective date of  
27 this Act is governed by the law in effect immediately before the



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1 effective date of this Act, and the former law is continued in  
2 effect for that purpose.

3 SECTION 8. This Act takes effect September 1, 2007.