

## **BILL ANALYSIS**

Senate Research Center  
81R2353 JSC-F

S.B. 460  
By: Gallegos  
State Affairs  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

A handful of municipalities have subpoenaed documents and information developed in the representation of fire fighters or police officers when the representative is not an attorney. Many civil service commissions, which serve as the custodians of records, have refused to allow a person to view or receive copies of documents contained within the person's own departmental file. This practice has been upheld by the Texas Attorney General through open records decisions. In an appeal of discipline, the records contained within departmental files are often submitted as evidence to prove allegations of misconduct, however, the fire fighters and police officers are denied the opportunity to review these documents prior to the appeal hearing. This is also a violation of procedural due process where Chapter 143 (Municipal Civil Service for Firefighters and Police Officers), Local Government Code, clearly created a property right to employment.

As proposed, S.B. 460 provides that a communication, document, or other work product pertaining to an appeal of discipline is protected from subpoena, discovery, or other means regardless of whether a person who is not an attorney is selected to represent a fire fighter or police officer in the proceeding, prior to a hearing, judicial review, or appeal.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 143.010, Local Government Code, by adding Subsections (c-1) and (c-2), as follows:

(c-1) Provides that the following information relating to a hearing, review, or appeal is privileged and confidential, regardless of whether the person representing the fire fighter or police officer under Subsection (c) (relating to a fire fighter or police officer's entitlement to representation) is an attorney: the communications, including conversations, correspondence, and electronic communications, between a fire fighter or police officer and the person representing the fire fighter or police officer under Subsection (c), the work product of the person representing the fire fighter or police officer under Subsection (c).

(c-2) Provides that information described by Subsection (c-1) is not subject to discovery, subpoena, or other means of legal compulsion for its release; is not subject to disclosure under Chapter 552 (Public Information), Government Code; and is prohibited from being disclosed to another person, including a party to a hearing, appeal, or review, without the permission of the fire fighter or the police officer.

SECTION 2. Amends Section 143.089, Local Government Code, by amending Subsection (g) and adding Subsections (h) and (i), as follows:

(g) Authorizes a fire or police department to maintain a department file, rather than a personnel file, on a fire fighter or police officer employed by the department for the department's use. Prohibits the department from releasing any information contained in the department file to any agency or person requesting information relating to a fire

fighter or police officer except as provided by Subsection (i). Makes a conforming change.

(h) Requires the department to refer to the director or the director's designee a person or agency that requests information that is maintained about a fire fighter or police officer. Provides that any release of information in the fire fighter's or police officer's personnel file is governed by Subsection (f) (relating to the privacy of information as it applies to police officers and fire fighters). Provides that any release of information in the fire fighter's or police officer's department file is governed by Subsections (g) and (i).

(i) Entitles a fire fighter or police officer to view the contents of the person's department file maintained under Subsection (g) and, on request, to a copy of any document in the person's department file.

SECTION 3. (a) Makes application of Sections 143.010 (c-1) and (c-2), Local Government Code, prospective.

(b) Makes application of Section 143.089, Local Government Code, prospective. Provides that Section 143.089(i), Local Government Code, as added by this Act, applies to the entire contents of a department file regardless of the date on which a document or other information was placed in the department file.

SECTION 4. Effective date: upon passage or September 1, 2009.