

By: Johnson of Dallas

H.B. No. 4438

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the appeal to a hearing examiner of a promotional bypass
3 or disciplinary action taken against a police officer in certain
4 municipalities.

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

6 SECTION 1. The heading to Section 143.057, Local Government
7 Code, is amended to read as follows:

8 Sec. 143.057. HEARING EXAMINERS FOR FIRE FIGHTER APPEALS.

9 SECTION 2. Sections 143.057(a), (b), (c), (d), (e), (i),
10 and (j), Local Government Code, are amended to read as follows:

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

22 (b) To exercise the choice of appealing to a hearing
23 examiner, the appealing fire fighter [~~or police officer~~] must
24 submit to the director a written request as part of the original

1 notice of appeal required under this chapter stating the person's
2 decision to appeal to an independent third party hearing examiner.

3 (c) The hearing examiner's decision is final and binding on
4 all parties. If the fire fighter [~~or police officer~~] decides to
5 appeal to an independent third party hearing examiner, the person
6 automatically waives all rights to appeal to a district court
7 except as provided by Subsection (j).

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

24 (e) The appeal hearing shall begin as soon as the hearing
25 examiner can be scheduled. If the hearing examiner cannot begin the
26 hearing within 45 calendar days after the date of selection, the
27 fire fighter [~~or police officer~~] may, within two days after

1 learning of that fact, call for the selection of a new hearing
2 examiner using the procedure prescribed by Subsection (d).

3 (i) The hearing examiner's fees and expenses are shared
4 equally by the appealing fire fighter [~~or police officer~~] and by the
5 department. The costs of a witness are paid by the party who calls
6 the witness.

7 (j) A district court may hear an appeal of a hearing
8 examiner's award only on the grounds that the arbitration panel was
9 without jurisdiction or exceeded its jurisdiction or that the order
10 was procured by fraud, collusion, or other unlawful means. An
11 appeal must be brought in the district court having jurisdiction in
12 the municipality in which the fire [~~or police~~] department is
13 located.

14 SECTION 3. Section 143.036(f), Local Government Code, is
15 amended to read as follows:

16 (f) Unless the department head has a valid reason for not
17 appointing the person, the department head shall appoint the
18 eligible promotional candidate having the highest grade on the
19 eligibility list. If the department head has a valid reason for not
20 appointing the eligible promotional candidate having the highest
21 grade, the department head shall personally discuss the reason with
22 the person being bypassed before appointing another person. The
23 department head shall also file the reason in writing with the
24 commission and shall provide the person with a copy of the written
25 notice. On application of the bypassed eligible promotional
26 candidate, the reason the department head did not appoint that
27 person is subject to review by the commission or, if the person is a

1 fire fighter and on the written request of the fire fighter [~~person~~
2 ~~being bypassed~~], by an independent third party hearing examiner
3 under Section 143.057.

4 SECTION 4. Section 143.056(e), Local Government Code, is
5 amended to read as follows:

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

14 SECTION 5. Section 143.090, Local Government Code, is
15 amended to read as follows:

16 Sec. 143.090. RELEASE OF PHOTOGRAPHS OF POLICE OFFICERS. A
17 department, commission, or municipality may not release a
18 photograph that depicts a police officer unless:

19 (1) the officer has been charged with an offense by
20 indictment or by information;

21 (2) the officer is a party in a civil service hearing
22 [~~or a case before a hearing examiner or in arbitration~~];

23 (3) the photograph is introduced as evidence in a
24 judicial proceeding; or

25 (4) the officer gives written consent to the release
26 of the photograph.

27 SECTION 6. The changes in law made by this Act apply only to

1 a promotional bypass or disciplinary action given on or after the
2 effective date of this Act. A promotional bypass or disciplinary
3 action given before the effective date of this Act is governed by
4 the law in effect immediately before the effective date of this Act,
5 and that law is continued in effect for that purpose.

6 SECTION 7. This Act takes effect September 1, 2021.