

State of Texas
House of Representatives

RECEIVED

NOV 13 2009



Charlie Geren

CAPITOL OFFICE:
P.O. Box 2910
AUSTIN, TEXAS 78768-2910
512-463-0610
FAX 512-463-8310

OPINION COMMITTEE

DISTRICT OFFICE:
1011 ROBERTS CUT-OFF
RIVER OAKS, TEXAS 76114
817-738-8333
FAX 817-738-8362

November 6, 2009

FILE # ML-46245-09
I.D. # 46245

The Honorable Greg Abbott
Attorney General
Attn: Jason Boatright
State of Texas
P.O. Box 12584
Austin, Texas 78711-2548

RQ-0840-GA

Re: GA-0662 Application of Local Government Code section 143.014(c) to municipalities that have adopted Local Government Code Chapter 174, the Fire and Police Employee Relations Act

Dear General Abbott:

As Chairman of the Committee on House Administration, I respectfully request the reconsideration of Attorney General Opinion GA-0662.

Both the Fort Worth Fire Fighters Association Local 440 and the Texas State Association of Fire Fighters have asked that I look into the matter. I understand that extensive research into the legislative history of H.B. 1015 (68th Legislature, Regular Session) which created the statutory language at issue, along with the statewide application of the provision since its passage in 1983, indicate that reconsideration of the Opinion is warranted.

As always, thank you for your dedicated service to the State. Please contact me if I may be of service or provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlie Geren".

Charlie Geren

**DEATS
DURST
OWEN &
LEVY, P.L.L.C.**

ATTORNEYS & COUNSELORS

1204 SAN ANTONIO STREET, SUITE 203 • AUSTIN, TEXAS 70701 • 512-474-6200 • FAX 512-474-7896

**B. CRAIG DEATS
PHILIP DURST
MARTHA E. OWEN
RICHARD LEVY
GREG R. JOHNSON
ELAINE E. EDWARDS**

*BOARD CERTIFIED: LABOR AND EMPLOYMENT LAW
**BOARD CERTIFIED: CIVIL APPELLATE LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

August 24, 2009

Honorable Greg Abbott
Texas Attorney General
Attn: Jason Boatright
P.O. Box 12548
Austin, Texas 78711-2548

RE: AG Opinion No. GA-0662-Reconsideration Request

Dear General Abbott:

This letter brief is filed in conjunction with the request by House Administration Committee Chair Charles Geren for reconsideration of Attorney General Opinion No. GA-0662, which deals with the application of Local Government Code §143.014(c) to municipalities that have adopted for Fire and Police Employees Relations Action, Local Government Code Chapter 174. Because the TSAFF feels that the original opinion overlooks critical legislative history, the TSAFF supports the request for reconsideration, and respectfully offers the following comments.

I. Statement of Interest.

This brief is submitted on behalf of the Texas State Association of Firefighters (TSAFF). The TSAFF represents municipal firefighters throughout the State of Texas, including several thousand who work in cities governed by the Fire and Police Civil Service Act, Local Government Code, Chapter 143 (the "CSA"). The TSAFF has a vital interest to ensure that its member fire fighters continue to receive the full protection intended by the Legislature in passing this legislation, and by the voters who adopted the CSA's protections for their fire fighters by local adoption election under §143.004. Because the opinions reached by the Attorney General's Opinion Committee in the original opinion affect those interests in a negative way, the TSAFF respectfully requests that these comments on behalf of its members be considered.

II. Background.

Opinion No. GA-0662 concerns the continued ability of a civil service city to appoint assistant department heads under Local Government Code §143.014 after that city's voters have also adopted the Fire and Police Employee Relations Act, Local Government Code Chapter 174 (the "FPERA"). With limited exceptions, the CSA requires that all classified positions in a fire

or police department be filled competitively. See §143.021(c)(existing positions below the rank of Department Head "may be filled only by an eligibility list that results from an examination held in accordance with this chapter").¹ One exception to this requirement, pertinent here, is found in §143.014, which establishes an appointment procedure for positions immediately below that of Department Head. Section 143.014(a) makes this appointment procedure applicable only to cities with a population of less than 1.5 million, thus excluding from its application the City of Houston.² Section 143.014(b) allows the city's governing body by resolution or ordinance to authorize the department head to appoint assistant department heads if there are at least four (4) classifications below the classification of department head. Thus, subsection (b) authorizes the creation by ordinance of an appointment procedure for the position of assistant department head.

Sections 143.014(d) & (e) establish the qualifications that must be met by persons appointed as assistant department heads in fire and police departments. Section 143.014(f) requires that appointments be made within 90 days after a vacancy occurs. Sections 143.014(g) & (h) deal with the department heads' authority to remove persons appointed as assistant department heads. While the appointed person may be removed from the assistant department head position by the department head for any reason, the appointed person must be returned to his/her prior position, and continues to enjoy full civil service rights in that position. Section 143.014(i) is a "grandfather" provision protecting persons appointed to assistant department head positions prior to 1983.

Section 143.014(c) creates a limitation on the number of persons who can be appointed by the department head pursuant to the appointment procedure established in other subsections of §143.014. The number of appointments that can be made in fire departments depends on the number of fire fighters in the department. The number of appointments that can be made in a police department depends on the number of persons serving in that classification on January 1, 1983. After establishing these numerical imitations, subsection (c) ends with the following sentence:

This subsection does not apply to a municipality that has adopted The Fire and Police Employee Relations Act (Article 5154c-1, Vernon's Texas Civil Statutes) unless the municipality specifically adopts the appointment procedure prescribed by this subsection through the collective bargaining process.³

¹ All statutory references are to the Local Government Code unless otherwise noted.

² Appointment of Assistant Chiefs in Houston is governed by a separate civil service provision located in §143.102.

³ When initially passed in 1975, the FPERA was found in an uncodified form at Texas Revised Civil Statutes art. 5154c-1. It was moved to Local Government Code Chapter 174 in 1987 as part of the codification process.

In its original opinion, the Opinion Committee provided an opinion on the scope of the limitation established by the last sentence of subsection (c). The committee concluded that a city's "adoption of the FPERA does not change the subsection (b) authorization for the fire chief to appoint persons to the classification immediately below his own classification, but it removes the numerical limits established by subsection (c), unless the City adopts this procedure through the collective bargaining process." AG Opinion No. GA-0062 at p. 3. The committee rejected TSAFF's position that the last sentence of subsection (c) was inherently contradictory because it used the phrase "the appointment procedure prescribed by this subsection" when the appointment procedure in fact was not prescribed by subsection (c). The Opinion Committee noted that the appointment procedure was not confined to any one subsection of §143.014. The Opinion Committee also cited legislative history, specifically a portion of the House Study Group's bill analysis, in support of its position that the last sentence of subsection (c) was intended only to remove the numerical limits established by subsection (c) in cities that had adopted the FPERA. *Id.* at 4-5.

Obviously, by advertent to legislative history, the Opinion Committee necessarily concluded that the last sentence of §143.014(c) is ambiguous. See *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 442 (Tex. 2009) (courts normally do not resort to extrinsic aides such as legislative history unless the language of the statute is ambiguous). While TSAFF certainly agrees that the statutory language is ambiguous and that resort to legislative history to interpret the statute is appropriate, it respectfully disagrees that the language of the statute, interpreted in light of the legislative history, supports the original conclusion reached by the Opinion Committee. In fact, legislative history not alluded to by the Committee indicates quite clearly that the legislature, in adopting the statute now found at §143.014, intended that the entire appointment process for assistant department heads be inapplicable in cities that had adopted the FPERA unless such appointment procedure was adopted through bargaining. That legislative history is reviewed below.

III. Argument.

The logical starting point for analysis is the language of §143.014 as originally adopted by the Legislature. In 1983, the Legislature adopted H.B. No. 1015 which amended several different parts of the CSA. See Acts 1983, 68th Leg., ch. 420. A copy of the enrolled version of H.B. No. 1015 is included herewith as Exhibit 1. Section 3 of H.B. No. 1015 amended the CSA, then found an uncodified form at TRCS art. 1269m, by adding a new §8A dealing with the "Classification and Appointment of Certain Firemen and Policemen." See Exhibit 1, p. 4. Subsection (a) of the newly enacted §8A required cities to establish fire fighter and police officer classifications by ordinance, and to prescribe the number of positions in each such classification. That language today is found in Local Government Code §143.021(a). Other portions of §8A likewise were directed towards topics having nothing to do with the appointment of assistant department heads. For example, the first sentence of §8A(b) contains a requirement for filling

vacancies by the civil service examination, a requirement now located in Local Government Code §143.021(c). Section 8A(d) establishes certain pay requirements today found in Local Government Code §§143.038 & 143.041. Section 8A(e) sets out the procedure for filling promotional vacancies today found in Local Government Code §143.036. Section 8A(l) authorizes educational incentive pay for fire fighters and police officers, a requirement today found in Local Government Code §143.044.

Other sections of §8A dealt with the procedure for appointment of assistant department heads. Subsections of §8A which dealt with this topic are §§8A(b), (c), and (h)-(k). Of special significance here was the language of §8A(b)-(c). Those subsections stated:

(b) Except as prescribed by this section, a classification now in existence, or that may be hereafter created, may not be filled except by examination held in accordance with this Act. If the city council or governing body of the city approves by resolution or ordinance, the chief or head of a fire or police department in which at least four classifications exist below the classification of chief or head may appoint each person occupying authorized positions in the classification immediately below that of chief or department head, as provided by this section.

(c) The total number of persons appointed to the classification immediately below that of the police chief in the police department may not exceed the total number of persons, plus one, serving in the classification immediately below that of the police chief or head of the police department in that city on January 1, 1983. In a city having fewer than 300 certified fire fighters, the chief or head of the department may appoint not more than one person to the classification immediately below that of chief or head. In a city having 300 or more certified fire fighters but not more than 600, the chief or head of the fire department may appoint two persons. In a city having more than 600 certified fire fighters, the chief or head of the department may appoint three persons. This subsection does not apply to a city that has adopted the Fire and Police Employee Relations Act (Article 5154c-1, Vernon's Texas Civil Statutes), unless the city specifically adopts the appointment procedure prescribed by this subsection through the collective bargaining process.

Thus, subsection (b) established a requirement to fill classified positions by examination, but created an exception allowing appointment of assistant department heads if approved by a city's governing body by resolution or ordinance. Subsection (c) in turn limited the number of appointments that could be made, but otherwise failed to add to or qualified the appointment procedure which actually is established in subsection (b). As does Local Government Code

§143.014(c), §8A(c) concludes with the ambiguous sentence stating that "the appointment procedure prescribed by this subsection" does not apply to FPERA cities unless adopted through collective bargaining. Thus, the ambiguity contained in the last sentence of §143.014(c) is also found in the language of the statute as originally adopted in 1983.

However, other evidence from the legislative history indicates clearly that the Legislature intended the entire appointment process to be unavailable to collective bargaining cities. Indeed, the language from the bill analysis cited by the Opinion Committee does not unambiguously support the Opinion Committee's interpretation of the last sentence of subsection (c). While the language can be reasonably interpreted as the Committee has interpreted it, it can also be interpreted simply to mean that the appointment procedure generally is not available in collective bargaining cities. That this later interpretation is the correct one is made absolutely clear by other portions of that legislative history.

For example, the bill as it ultimately was passed was a committee substitute for the original H.B. No. 1015. The House Urban Affairs Committee provided a "Comparative Analysis Between House Bill 1015 by Bill Messer and Committee Substitute." Paragraph number 4 of the Comparative Analysis states:

4. House Bill 1015 allows for the optional procedure whereby the Department Head in all cities can appoint all persons serving in the two positions immediately below Department Head. The Committee Substitute provides for *the alternate appointment procedure only in non-collective bargaining cities of less than 1,500,000 and only for the persons serving in the classification immediately below Department Head in certain circumstances.* [emphasis added]

The Comparative Analysis is attached hereto as Exhibit 2.⁴ Similarly, the bill analysis for C.S.H.B. 1015 prepared by the Urban Affairs Committee states under "Purpose and Synopsis":

The Committee Substitute amends Article 1269m to provide... (2) that in non-collective bargaining cities of less than 1,500,000 the City Council may authorize the Department Head to appoint and remove persons in the position immediately below the position of Department Head.

The referenced bill analysis is attached hereto as Exhibit 3. The quoted language appears on the first page thereof. Similarly, that same bill analysis states in the "Section-By-Section Analysis":

⁴ Exhibits 1-4 provided herewith may be obtained online from the Legislative Reference Library at www.lrl.state.tx.us.

Honorable Greg Abbott
August 24, 2009
Page 6

Section 3. Amends Section 8 of the Act by adding a Section 8A. This Section will allow in cities of less than 1,500,000 appointment and removal by the Department Head of persons in the classification immediately below the Chief under these conditions:

...


(e) the appointment procedure is prohibited in collective bargaining cities and Houston.

Id. at pp. 1-2. Thus, both the Comparative Analysis and the bill analysis prepared by the House Committee indicate conclusively that the intent was to prevent use of the appointment procedure in its entirety by collective bargaining cities unless such procedure was bargained for.

Finally, the Bill History sheet (Exhibit 4) reveals that the committee substitute was the version of the statutory amendment that was approved by both houses of the legislature and became law. Thus, the comparative analysis and the bill analysis prepared concerning the committee substitute provide the best evidence concerning the legislative intent in amending the civil service act to provide an appointment procedure for assistant department heads of police and fire departments. And as those documents make clear, the legislature intended that the appointment procedure not be available in collective bargaining cities unless bargained for.

For all these reasons, TSAFF respectfully contends that §143.014(c), while not artfully worded, clearly was intended to prohibit use of the appointment procedure in collective bargaining cities unless such procedure was approved through collective bargaining. The Committee respectfully is requested to reconsider its opinion and to so find.

Respectfully submitted,



B. Craig Deats
General Counsel - TSAFF

Honorable Greg Abbott
August 24, 2009
Page 7

Attachments

- EX 1 - H.B. No. 1015 (RS 1983) (Enrolled)
- EX 2 - Comparative Analysis Between House Bill 1015 by Bill Messer and
Committee Substitute
- EX 3 - Bill Analysis – C.S.H.B. 1015
- EX 4 - Bill History for 68th Leg., H.B. 1015

xc: **Mike Higgins, TSAFF, Chief of Staff**
Rafael Torres, TSAFF, Service Director
Sandy McGhee, IAFF Dist. 11 Vice President
Jim Tate, President, Fort Worth FFA President
Stephen Truesdell, Austin FFA President

Briefing On Attorney General Opinion GA 0662

The reason we asked (former) Chairman Tony Goolsby to request the Attorney General Opinion at issue was to determine the date that the Firefighter and Police Officer Employee Relations Act (FPERA) is actually adopted by the voters of a municipality following a successful election to adopt the Act. The relevant statutory language in Local Government Code, Chapter 174 is below:

§ 174.052. Effect of Successful Adoption Election

If a majority of the votes cast in an election under Section 174.051 favor adoption of this chapter, the governing body shall place this chapter in effect, not later than the 30th day after the beginning of the first fiscal year of the political subdivision after the election.

We needed this information for the purpose of the proper application of Local Government Code §143.014, which states in relevant part:

§ 143.014. Appointment and Removal of Person Classified Immediately Below Department Head

(c) In a police department, the total number of persons appointed to the classification immediately below that of department head may not exceed the total number of persons, plus one, serving in that classification on January 1, 1983. In a fire department in a municipality having fewer than 300 certified fire fighters, the department head may appoint not more than one person to the classification immediately below that of department head. If a municipality has 300 to 600 certified fire fighters, the department head may appoint two persons to the classification. If a municipality has more than 600 certified fire fighters, the department head may appoint three persons to the classification. This subsection does not apply to a municipality that has adopted The Fire and Police Employee Relations Act (Article 5154c-1, Vernon's Texas Civil Statutes) unless the municipality specifically adopts the appointment procedure prescribed by this subsection through the collective bargaining process.

Our legal issue was simple. Once a municipality adopts FPERA and there is no collective bargaining contract in effect specifically authorizing the appointment of persons pursuant to §143.014 (c), does the municipality have authority to do so? It is our opinion that on the date the voters adopt FPERA, the municipality and the association must authorize such appointment through a contract. Absent this, the provisions of §143.014 are not effective. Thus, a municipality is prevented from making these appointments on the date the voters adopt FPERA and not on the date the Act is placed in effect in accordance with §174.052.

Attorney General Opinion GA 0662 went beyond the original question, and seems to not even address the original question. Rather, it addresses an issue that was only recently raised in two municipalities during contract negotiations. A drafting error made in 1983 refers to §143.014 (as a whole) as a "subsection" instead of the proper legislative term "section". The Attorney General opines that since "sub" precedes "section", then only §143.014 (c) does not apply within a municipality that has adopted FPERA. The opinion further provides that since this subsection does not apply to such municipalities, a municipality may appoint persons immediately below department head without limitation as to the number of appointees. This goes against the legislative intent as well as the practical application of the 1983 amendment since it's adoption.

F
ENROLLED

H.B. No: 1015

1 AN ACT

2 relating to firemen's and policemen's civil service; providing a
3 penalty.

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

5 SECTION 1. Section 6, Chapter 325, Acts of the 50th
6 Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas
7 Civil Statutes), is amended to read as follows:

8 Sec. 6. DIRECTOR OF CIVIL SERVICE. (a) There is hereby
9 created the office of Director of Firemen's and Policemen's Civil
10 Service, which shall be filled by the appointment of the
11 Commission. The [ef-some] person appointed must meet [meeting]
12 the same requirements as hereinabove provided for members of the
13 Commission, except that in a city having a population of fewer than
14 1,500,000, according to the most recent federal census, the
15 Director is not required to meet the three-year local residency
16 requirement prescribed by Section 3 of this Act. Said Director may
17 be either a member of the Commission, another employee of said
18 city, or some other person. The legislative body of such city
19 shall determine what salary, if any, shall be paid to such
20 Director. Said Director shall at all times, be subject to removal
21 by the Commission. He shall serve as Secretary to the Commission,
22 and shall perform all such work incidental to the Firemen's and
23 Policemen's Civil Service as may be required of him by the
24 Commission.

1 **(b)** ~~In [it-is-provided,-however,-that-in]~~ those cities which
2 have a duly and legally constituted Director of Civil Service, by
3 whatever name he may be called, said Director shall be the Director
4 of the Firemen's and Policemen's Civil Service, but he shall
5 administer civil service pertaining to Firemen and Policemen in
6 accordance with this Law.

7 SECTION 2. Section 8, Chapter 325, Acts of the 50th
8 Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas
9 Civil Statutes), as amended by Section 1, Chapter 83, Acts of the
10 66th Legislature, Regular Session, 1979, and Section 3, Chapter
11 753, Acts of the 66th Legislature, Regular Session, 1979, is
12 amended to read as follows:

13 Sec. 8. CLASSIFICATION OF FIREMEN AND POLICEMEN; EDUCATIONAL
14 INCENTIVE PAY. (a) In a city having a population of 1,500,000 or
15 more, according to the most recent federal census, the [The]
16 Commission shall provide for the classification of all firemen and
17 policemen. Such classification shall be provided by ordinance of
18 the City Council, or legislative body. Said City Council, or
19 legislative body, shall prescribe by ordinance the number of
20 positions of each classification.

21 **(b)** No classification now in existence, or that may be
22 hereafter created in such cities, shall ever be filled except by
23 examination held in accordance with the provisions of this law.
24 All persons in each classification shall be paid the same salary
25 and in addition thereto be paid any of the following types of pay
26 that they may be entitled to: (1) longevity pay; (2) seniority
27 pay; (3) educational incentive pay; or (4) assignment pay. This

1 shall not prevent the Head of such Department from designating some
2 person from the next lower classification to fill a position in a
3 higher classification temporarily, but any such person so
4 designated by the Head of the Department shall be paid the base
5 salary of such higher position plus his own longevity pay during
6 the time he performs the duties thereof. The temporary performance
7 of the duties of any such position by a person who has not been
8 promoted in accordance with the provisions of this Act shall never
9 be construed to promote such person. All vacancies shall be filled
10 by permanent appointment from eligibility lists furnished by the
11 Commission within ninety (90) days after such vacancy occurs.

12 (c) Firemen and policemen shall be classified as above
13 provided, and shall be under civil service protection except the
14 Chief or Head of such Fire Department or Police Department, by
15 whatever name he may be known.

16 (d) Said Chiefs or Department Heads shall be appointed by
17 the Chief Executive, and confirmed by the City Council or
18 legislative body except in cities where the Department Heads are
19 elected. In those cities having elective Fire and Police
20 Commissioners the appointments for Chiefs and Heads of those
21 Departments shall be made by the respective Fire or Police
22 Commissioners in whose Department the vacancy exists, and such
23 appointments shall be confirmed by the City Council or legislative
24 body.

25 (e) Said City Council or legislative body may authorize
26 educational incentive pay in addition to regular pay for policemen
27 and firemen within each classification, who have successfully

1 completed courses in an accredited college or university, provided
2 that such courses are applicable toward a degree in law
3 enforcement-police science and include the core curriculum in law
4 enforcement or are applicable toward a degree in fire science. An
5 accredited college or university, as that term is used herein,
6 shall mean any college or university accredited by the nationally
7 recognized accrediting agency and the state board of education in
8 the state wherein said college or university is located and
9 approved or certified by the Texas Commission on Law Enforcement
10 Officer Standards and Education as teaching the core curriculum or
11 its equivalent or, in the case of fire science degree courses,
12 approved or certified by the Texas Commission on Fire Protection,
13 Personnel Standards, and Education. Core curriculum in law
14 enforcement, as used herein, shall mean those courses in law
15 enforcement education as approved by the Coordinating Board, Texas
16 College and University System and the Texas Commission on Law
17 Enforcement Officer Standards and Education.

18 **SECTION 3.** Chapter 325, Acts of the 50th Legislature,
19 Regular Session, 1947 (Article 1269m, Vernon's Texas Civil
20 Statutes), is amended by adding Section 8A to read as follows:

21 Sec. 8A. CLASSIFICATION AND APPOINTMENT OF CERTAIN FIREMEN
22 AND POLICEMEN. (a) In a city having a population of less than
23 1,500,000 according to the most recent federal census, the
24 Commission shall provide for the classification of all firemen and
25 policemen. The classification shall be provided by ordinance of
26 the city council or legislative body. The city council or
27 legislative body shall prescribe the number of positions in each

1 classification by ordinance.

2 (b) Except as prescribed by this section, a classification
3 now in existence, or that may be hereafter created, may not be
4 filled except by examination held in accordance with this Act. If
5 the city council or governing body of the city approves by
6 resolution or ordinance, the chief or head of a fire or police
7 department in which at least four classifications exist below the
8 classification of chief or head may appoint each person occupying
9 authorized positions in the classification immediately below that
10 of chief or department head, as provided by this section.

11 (c) The total number of persons appointed to the
12 classification immediately below that of the police chief in the
13 police department may not exceed the total number of persons, plus
14 one, serving in the classification immediately below that of the
15 police chief or head of the police department in that city on
16 January 1, 1983. In a city having fewer than 300 certified fire
17 fighters, the chief or head of the department may appoint not more
18 than one person to the classification immediately below that of
19 chief or head. In a city having 300 or more certified fire
20 fighters but not more than 600, the chief or head of the fire
21 department may appoint two persons. In a city having more than 600
22 certified fire fighters, the chief or head of the department may
23 appoint three persons. This subsection does not apply to a city
24 that has adopted The Fire and Police Employees Relations Act
25 (Article 5154c-1, Vernon's Texas Civil Statutes), unless the city
26 specifically adopts the appointment procedure prescribed by this
27 subsection through the collective bargaining process.

1 (d) All persons in each classification shall be paid the
2 same salary and in addition thereto be paid any of the following
3 types of pay to which they may be entitled: (1) longevity or
4 seniority pay; (2) educational incentive pay; (3) assignment pay;
5 and (4) certification pay. This shall not prevent the head of the
6 department from designating some person from the next lower
7 classification to fill a position in a higher classification
8 temporarily, but any person designated by the head of the
9 department shall be paid the base salary of the higher position
10 plus his own longevity or seniority pay, educational incentive pay,
11 and certification pay during the time he performs the duties. The
12 temporary performance of the duties of a higher position by a
13 person who has not been promoted as prescribed by this Act may not
14 be construed as a promotion of the person.

15 (e) All vacancies in classifications other than the
16 classification immediately below that of the chief or department
17 head which is selected and filled by the chief or department head
18 shall be filled by permanent appointment from eligibility lists
19 furnished by the commission within 60 days after the vacancy
20 occurs. If before the expiration of the current eligibility list a
21 vacancy occurs in a classification other than a classification
22 immediately below that of the chief or department head which is
23 filled by the chief or department head, the commission shall submit
24 names from the list to the department head until the vacancy is
25 filled or the list is exhausted. If no list is in existence, the
26 vacancy shall be filled from a list which the commission shall
27 provide within 90 days after the vacancy occurs.

1 (f) Except for the chief or head of the fire or police
2 department, and except for those persons selected and appointed to
3 the classification immediately below the chief or department head
4 by the chief or head of the fire or police department, firemen and
5 policemen are classified as prescribed by this section, and are
6 under civil service protection.

7 (g) Except in cities in which the department heads are
8 elected, the chiefs or department heads are appointed by the chief
9 executive and confirmed by the city council or legislative body.
10 In a city with elected fire and police commissioners, the
11 appointments of the chiefs and heads of those departments shall be
12 made by the fire or police commissioner in whose department the
13 vacancy exists, and the appointments shall be confirmed by the city
14 council or legislative body.

15 (h) If authorized by this Act and by the city council or
16 legislative body, each person occupying a position in the
17 classification immediately below that of the chief or department
18 head is appointed by the chief or department head in whose
19 department the vacancy exists and serves at the pleasure of the
20 chief or department head. The classification immediately below
21 that of the chief or department head may include a person with a
22 different title but who has the same pay grade.

23 (i) To be eligible for appointment in the police department,
24 a person must be employed by the police department of that city as
25 a sworn police officer with at least two years continuous service
26 in that department as a sworn police officer and must meet the
27 requirements for appointment as the chief or head of a police

1 ~~department prescribed by Section 14D(7) of this Act. To be~~
2 ~~eligible for appointment in the fire department, a person must be~~
3 ~~employed by the fire department of that city with a permanent~~
4 ~~classification in at least an officer level and must meet the~~
5 ~~requirements for appointment as the chief or head of a fire~~
6 ~~department prescribed by Section 14D(7) of this Act.~~

7 ~~(j) Those persons already serving under permanent~~
8 ~~appointment to a position in the classification immediately below~~
9 ~~that of the chief or department head prior to the effective date of~~
10 ~~this Act are not required to be appointed or reappointed as a~~
11 ~~condition of tenure or continued employment, nor does failure by~~
12 ~~any person already serving under permanent employment to fulfill~~
13 ~~the requirements of this section make the person ineligible for~~
14 ~~continued employment in the position in his department. The chief~~
15 ~~or department head shall make all appointments not later than the~~
16 ~~90th day after the day on which the vacancy occurs. A person~~
17 ~~appointed by the chief or department head to a position in the~~
18 ~~classification immediately below that of the chief or department~~
19 ~~head who is subsequently removed from that position by the chief or~~
20 ~~department head shall be reinstated in the department and placed in~~
21 ~~the same classification or its equivalent, that the person held~~
22 ~~prior to appointment, and retains all rights of seniority in the~~
23 ~~department.~~

24 ~~(k) If the person is charged with an offense in violation of~~
25 ~~civil service rules and indefinitely suspended by the chief or~~
26 ~~department head, the person shall have the same rights and~~
27 ~~privileges of a hearing before the commission, and in the same~~

1 manner and under the same conditions as classified employees. If
2 the commission, the hearing examiner, or a court of competent
3 jurisdiction finds the charges to be untrue or unfounded, the
4 person shall immediately be restored to the same classification, or
5 its equivalent, that the person held prior to appointment. The
6 person shall enjoy all the rights and privileges of his prior
7 position according to seniority and shall be repaid for any lost
8 wages.

9 (1) The city council or legislative body of a city may
10 authorize educational incentive pay in addition to regular pay for
11 a fireman or policeman who has successfully completed courses at an
12 accredited college or university if the criteria for the
13 educational incentive pay are clearly established, are in writing,
14 and are applied equally to all firemen and policemen meeting the
15 criteria. If all firemen or policemen are afforded an opportunity
16 to qualify themselves for certification, certification pay may be
17 authorized by the city council or legislative body of the city in
18 addition to regular pay for those firemen meeting the requirements
19 for certification set by the Commission on Fire Protection
20 Personnel Standards and Education.

21 SECTION 4. Chapter 325, Acts of the 50th Legislature,
22 Regular Session, 1947 (Article 1269m, Vernon's Texas Civil
23 Statutes), is amended by adding Section 8D to read as follows:

24 Sec. 8D. ASSIGNMENT PAY. In any city having a population of
25 less than 1,500,000 according to the most recent federal census,
26 the city council or legislative body may authorize assignment pay
27 for fire fighters and police officers performing specialized

1 functions in their respective departments. The assignment pay is
2 in an amount and is payable under conditions as set by ordinance,
3 and is in addition to the fire fighters' and police officers'
4 regular pay. If the ordinance applies equally to all persons
5 meeting criteria established by the ordinance, the ordinance may
6 provide for payment to each fire fighter and police officer who
7 meets training or education criteria for an assignment, or the
8 ordinance may set criteria that provide for payment only to a fire
9 fighter or police officer in a special assignment. The chief or
10 head of the fire or police department is not eligible for the
11 assignment pay authorized by this section.

12 SECTION 5. Subsection A, Section 14, Chapter 325, Acts of
13 the 50th Legislature, Regular Session, 1947 (Article 1269m,
14 Vernon's Texas Civil Statutes), as amended by Section 1, Chapter
15 258, Acts of the 66th Legislature, Regular Session, 1979, and by
16 Section 7, Chapter 753, Acts of the 66th Legislature, Regular
17 Session, 1979, is reenacted to read as follows:

18 A. (1) All promotional examinations shall be open to all
19 policemen who have held a continuous position for two (2) years or
20 more immediately prior to the examination in the classification
21 immediately below, in salary, that classification for which the
22 examination is to be held. In police departments that have adopted
23 a classification plan that classifies positions on the basis of
24 similarity in duties and responsibilities, all promotional
25 examinations shall be open to a policeman who has held a continuous
26 position for two (2) years or more immediately prior to the
27 examination at the next lower paygrade, if it exists, in the

1 classification for which the promotional examination is being
2 offered. When there is not a sufficient number of members in the
3 next lower position with two (2) years' service in that position to
4 provide an adequate number of persons to take the examination, the
5 Commission shall open the examination to members in that position
6 with less than two (2) years' service. If there is still an
7 insufficient number, the Commission may extend the examination to
8 the members in the second lower position in salary to that for
9 which the examination is to be held.

10 (2) All promotional examinations shall be open to all
11 firemen who have ever held a continuous position for two (2) years
12 or more in the classification immediately below, in salary, that
13 classification for which the examination is being held. In fire
14 departments that have adopted a classification plan that classifies
15 positions on the basis of similarity in duties and
16 responsibilities, all promotional examinations shall be open to a
17 fireman who has ever held a continuous position for two (2) years
18 or more at the next lower paygrade, if it exists, in the class for
19 which the promotional examination is being offered. This section
20 may not be construed to prohibit lateral crossover between classes.
21 If there are not enough members in the next lower position with two
22 (2) years' service in that position to provide an adequate number
23 of persons to take the examination, the Commission may open the
24 examination to members in that position with less than two (2)
25 years' service. If there is still an insufficient number, the
26 Commission may extend the examination to the members in the second
27 lower position in salary to that for which the examination is to be

1 held with two (2) years' service in that position.

2 SECTION 6. Subsection D, Section 14, Chapter 325, Acts of
3 the 50th Legislature, Regular Session, 1947 (Article 1269m,
4 Vernon's Texas Civil Statutes), is amended to read as follows:

5 D. (1)(a) Except as prescribed by Subdivision (6) of this
6 subsection, all [Aii] applicants shall be given an identical
7 examination in the presence of each other, which promotional
8 examination shall be entirely in writing and no part of which shall
9 be by oral interview, and all of the questions asked therein shall
10 be prepared and composed in such a manner that the grading of the
11 examination papers can be promptly completed immediately after the
12 holding of the examination and shall be prepared so as to test the
13 knowledge of the applicants concerning information and facts, and
14 all of said questions shall be based upon material which is a
15 reasonably current publication and has been made reasonably
16 available to all members of the Fire or Police Department involved
17 and shall be based upon the duties of the position sought and upon
18 any study courses given by such Departmental Schools of
19 Instruction. All promotional examination questions must be taken
20 from sources that are listed in a notice that is posted by the
21 Commission at least thirty (30) days before the date of the
22 examination. Firemen or policemen may suggest source materials for
23 promotional examinations. The notice required by Section 13 of
24 this Act may include the name of each source used and the number of
25 questions taken from each source. The Commission may include the
26 chapter of each source. When one of the applicants taking an
27 examination for promotion has completed his answers, the grading of

1 such examination shall begin, and all of the examination papers
2 shall be graded as they are completed, at the place where the
3 examination is given and in the presence of any applicants who wish
4 to remain during the grading.

5 (b) The Director is responsible for the preparation and
6 security of all promotional examinations. The fairness of the
7 competitive promotional examinations is the responsibility of the
8 Commission, the Director, and any municipal employee involved in
9 the preparation or administration of the examination. A person who
10 knowingly or intentionally reveals any part of a promotional
11 examination to an unauthorized person or a person who knowingly or
12 intentionally receives from an unauthorized person any part of a
13 promotional examination commits a misdemeanor and shall be fined
14 not less than One Thousand Dollars (\$1,000) or imprisoned for not
15 more than one (1) year in the county jail or both.

16 (2) Except as prescribed by Subdivision (6) of this
17 subsection, the [The] grade which shall be placed on the
18 eligibility list for each policeman applicant shall be computed by
19 adding such policeman applicant's points for seniority to his grade
20 on such written examination. Grades on such written examinations
21 shall be based upon a maximum grade of one hundred (100) points and
22 shall be determined entirely by the correctness of each applicant's
23 answers to such questions. The minimum passing score for the
24 written examination is seventy (70) points.

25 (3) The grade which shall be placed on the eligibility list
26 for each fireman applicant shall be computed by adding the fireman
27 applicant's points for seniority to his grade on the written

1 examination. Grades on the written examination shall be based on a
2 maximum grade of one hundred (100) points and shall be determined
3 entirely by the correctness of each fireman applicant's answers to
4 the questions. The minimum passing score for the written
5 examination is seventy (70) points.

6 (4) Each applicant shall have the opportunity to examine the
7 source materials, his examination, and his answers thereto together
8 with the grading thereof and if dissatisfied shall, within five (5)
9 working days, appeal the same to the Commission for review in
10 accordance with the provisions of this Act.

11 (5) Except as prescribed by Section 8A of this Act, a
12 fireman is not [~~No-fireman-shall-be~~] eligible for promotion unless
13 he has served in such Department for at least two (2) years at any
14 time prior to the day of such promotional examination in the next
15 lower position or other positions specified by the Commission, and
16 no person with less than four (4) years' actual service in such
17 Department shall be eligible for promotion to the rank of captain
18 or its equivalent. Except as prescribed by Section 8A of this Act,
19 a policeman is not [~~No-policeman-shall-be~~] eligible for promotion
20 unless the policeman has served in the Department for at least two
21 (2) years immediately preceding the date of the promotional
22 examination in the next lower position or other positions specified
23 by the Commission, and no person with less than four (4) years'
24 actual service in the Department shall be eligible for promotion to
25 the rank of captain or its equivalent. Provided, however, that the
26 requirement of two (2) years' service in the Fire Department at any
27 time prior to the day of promotional examination shall not be

1 applicable to those persons recalled on active military duty for a
2 period not to exceed twenty-four (24) months. The Police
3 Department's requirement of two (2) years' service immediately
4 preceding the date of the promotional examination does not apply to
5 persons recalled to active military duty for a period not to exceed
6 twenty-four (24) months. Such persons shall be entitled to have
7 time spent on active military duty considered as duty in the
8 Department concerned. However, any person whose absence for active
9 military duty exceeds twelve (12) months, shall be required to
10 serve ninety (90) days upon returning to the Department before he
11 shall become eligible to participate in a promotional examination,
12 such period of time to be considered essential for bringing him up
13 to date on equipment and techniques.

14 (6)(a) In a city having a population of less than 1,500,000
15 according to the last preceding federal census, the Commission may,
16 on the recommendation of the Chief or Head of the Police Department
17 and a majority vote of the sworn police officers, adopt an
18 alternate promotional system to select persons to occupy nonentry
19 level positions other than positions that are filled by appointment
20 by the Chief or Head of the Police Department. The promotional
21 system shall comply with the following requirements:

22 (1) the Commission shall order the Director to conduct an
23 election and to submit the revised promotional system by secret
24 ballot to all sworn police officers;

25 (2) the election shall be held no earlier than the thirtieth
26 (30th) day after the day on which notice of the election is posted
27 at the Department. The election shall be conducted throughout each

1 regular work shift at an accessible location within the Department
2 during a 24-hour period;

3 (3) the ballot shall contain the specific amendment to the
4 promotional procedure and each sworn police officer shall be given
5 the opportunity to vote "for" or "against" the amendment;

6 (4) the revised promotional system must be approved by a
7 majority vote of the sworn police officers voting;

8 (5) a defeated promotional system amendment may not be
9 placed on a ballot for vote before the sworn police officers for at
10 least twelve (12) months after the date on which the prior election
11 was held;

12 (6) if approved by the sworn police officers, the
13 promotional system amendment becomes effective after all election
14 disputes have been ruled on and the election votes have been
15 canvassed by the Commission;

16 (7) the Commission shall canvass the votes not later than
17 the thirtieth (30th) day after the date on which the election was
18 held; and

19 (8) all appeals alleging election irregularity must be filed
20 with the Commission not later than the fifth (5th) working day
21 after the date on which the election closes.

22 (b) At any time after an alternate promotional system has
23 been adopted under this subdivision and has been in effect for at
24 least one hundred and eighty (180) days, the Police Chief may
25 petition the Commission to terminate the alternate system and the
26 Commission shall terminate the alternate system. If the alternate
27 system is terminated, an additional list may not be created under

1 the alternate system.

2 (c) At any time after an alternate promotional system has
3 been adopted under this subdivision and has been in effect for at
4 least one hundred and eighty (180) days, a petition signed by at
5 least thirty-five percent (35%) of the sworn police officers may be
6 submitted to the Commission asking that the alternate promotional
7 system be reconsidered. If a petition is submitted, the Commission
8 shall, not later than the sixtieth (60th) day after the date on
9 which the petition was filed, hold an election as prescribed by
10 Paragraph (a) of this subdivision. If a majority of those voting
11 vote to repeal, the Commission shall terminate the alternate
12 promotional system. If the alternate system is terminated, an
13 additional list may not be created under the alternate system.

14 (d) A promotional list may not be created if an election
15 under this subdivision is pending. An existing eligibility list,
16 whether created under the system prescribed by this Act or created
17 under an alternate system adopted under this subdivision, may not
18 be terminated before or extended beyond its expiration date. A
19 person promoted under an alternate system has the same rights and
20 the same status as a person promoted under this Act even if the
21 alternate system is later repealed.

22 (e) This subdivision does not apply to a city that has
23 adopted The Fire and Police Employee Relations Act (Article
24 5154c-1, Vernon's Texas Civil Statutes).

25 (7) [6] No person shall be eligible for appointment as
26 Chief or Head of the Fire Department of any city coming under the
27 provisions of this Act who is not eligible for certification by the

1 Commission on Fire Protection Personnel Standards and Education at
2 the intermediate level or its equivalent as determined by that
3 Commission and who has not served at least five (5) years as a
4 fully paid fireman. No person may be eligible for appointment as
5 Chief or Head of the Police Department who is not eligible for
6 certification by the Commission on Law Enforcement Officer
7 Standards and Education at the intermediate level or its equivalent
8 as determined by that Commission and who has not served as a bona
9 fide law enforcement officer for five (5) years.

10 SECTION 7. Section 16, Chapter 325, Acts of the 50th
11 Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas
12 Civil Statutes), is amended to read as follows:

13 Sec. 16. INDEFINITE SUSPENSIONS. (a) In a city having a
14 population of 1,500,000 or more according to the most recent
15 federal census, the [The] Chief or Head of the Fire Department or
16 Police Department of the city government shall have the power to
17 suspend indefinitely any officer or employee under his supervision
18 or jurisdiction for the violation of civil service rules, but in
19 every such case the officer making such order of suspension shall,
20 within one hundred and twenty (120) hours thereafter, file a
21 written statement with the Commission, giving the reasons for such
22 suspension, and immediately furnish a copy thereof to the officer
23 or employee affected by such act, said copy to be delivered in
24 person to such suspended officer or employee by said department
25 head. Said order of suspension shall inform the employee that he
26 has ten (10) days after receipt of a copy thereof, within which to
27 file a written appeal with the Commission. The Commission shall

1 hold a hearing and render a decision in writing within thirty (30)
2 days after it receives said notice of appeal. Said decision shall
3 state whether or not the suspended officer or employee shall be
4 permanently or temporarily dismissed from the Fire or Police
5 Department or be restored to his former position or status in the
6 classified service in the department. In the event that such
7 suspended employee is restored to the position or class of service
8 from which he was suspended, such employee shall receive full
9 compensation at the rate of pay provided for the position or class
10 of service from which he was suspended, for the actual time lost as
11 a result of such suspension. All hearings of the Commission in
12 case of such suspension shall be public.

13 (b) The written statement above provided to be filed by the
14 department head with the Commission, shall not only point out the
15 civil service rule alleged to have been violated by the suspended
16 employee, but shall contain the alleged acts of the employee which
17 the department head contends are in violation of the civil service
18 rules. It shall not be sufficient for the department head merely
19 to refer to the provisions of the rules alleged to have been
20 violated and in case the department head does not specifically
21 point out the act or acts complained of on the part of such
22 employee, it shall be the duty of the Commission promptly to
23 reinstate him. In any civil service hearing hereunder, the
24 department head is hereby restricted to his original written
25 statement and charges, which shall not be amended, and no act or
26 acts may be complained of by said department head which did not
27 happen or occur within six (6) months immediately preceding the

1 date of suspension by the department head. No employee shall be
2 suspended or dismissed by the Commission except for violation of
3 the civil service rules, and except upon a finding by the
4 Commission of the truth of the specific charges against such
5 employee.

6 (c) In the event the Commission orders that such suspended
7 employee be restored to his position as above provided, it shall be
8 the duty of the department head immediately to reinstate him as
9 ordered and in event the department head fails to do so, the
10 employee shall be entitled to his salary just as though he had been
11 regularly reinstated.

12 (d) In the event such department head wilfully refuses to
13 obey the orders of reinstatement of the Commission, and such
14 refusal persists for a period of ten (10) days, it shall be the
15 duty of the chief executive or legislative body of the city to
16 discharge such department head from his employment with the city.

17 (e) The Commission may punish for contempt any department
18 head who wilfully refuses to obey any lawful order of reinstatement
19 of the Commission, and such Commission shall have the same
20 authority herein to punish for contempt as has the Justice of the
21 Peace.

22 SECTION 8. Chapter 325, Acts of the 50th Legislature,
23 Regular Session, 1947 (Article 1269m, Vernon's Texas Civil
24 Statutes), is amended by adding Section 16b to read as follows:

25 Sec. 16b. DISCIPLINARY SUSPENSIONS. (a) In a city having a
26 population of 1,500,000 or more according to the most recent
27 federal census, the head of either the fire or the police

1 department may suspend an officer or employee under his
2 jurisdiction or supervision for disciplinary purposes, for
3 reasonable periods, not to exceed 15 days. If the department
4 suspends a person, the department head shall file with the
5 commission not later than the 120th hour after the person is
6 suspended a written statement of action, and the commission shall,
7 on appeal of the suspended officer or employee, hold a public
8 hearing as prescribed by Section 17 of this Act. The commission
9 shall determine whether just cause exists for the suspension. If
10 the department head fails to file the statement with the commission
11 within the 120-hour time period, the suspension is void and the
12 employee is entitled to his full salary. The commission may
13 reverse the decision of the department head and instruct the
14 department head to immediately restore the employee to his position
15 and to repay the employee for any lost wages. If the commission
16 finds that the period of disciplinary suspension should be reduced,
17 it may order a reduction in the period of suspension. If the
18 department head refuses to obey the order of the commission, the
19 provisions of Section 16 of this Act relating to salaries of
20 employees, the discharge of the department head, and the other
21 provisions relating to the refusal of the department head apply.

22 (b) In a city having a population of less than 1,500,000
23 according to the most recent federal census, the chief or head of
24 the fire department or police department may suspend an officer or
25 employee under his supervision or jurisdiction for the violation of
26 a civil service rule for a reasonable period not to exceed 15
27 calendar days, or for an indefinite period. An indefinite

1 suspension is equivalent to permanent dismissal from the
2 department. If offered by the chief or head of the department, the
3 officer or employee may agree in writing to voluntarily accept,
4 with no right of appeal, a suspension of not less than 16 or more
5 than 90 calendar days for violation of civil service rules. The
6 officer or employee must accept the offer not later than the fifth
7 working day after the offer is made. If the chief or head of a
8 department suspends a person, the chief or head shall, not later
9 than the 120th hour after the hour of suspension, file a written
10 statement with the commission giving the reasons for the
11 suspension, and shall immediately furnish a copy of the statement
12 to the suspended officer or employee. The chief or department head
13 shall deliver the copy in person to the suspended officer or
14 employee. The order of suspension shall inform the officer or
15 employee that if he wishes to appeal, he must file a written appeal
16 with the commission not later than the 10th day after the date on
17 which the officer or employee receives a copy of the statement. If
18 the officer or employee refuses an offer of suspension of not less
19 than 16 or more than 90 calendar days and wishes to appeal to the
20 commission, the officer or employee must file a written appeal with
21 the commission not later than the 15th day after the date the
22 officer or employee receives the statement. Unless the suspended
23 officer or employee and the commission mutually agree to postpone
24 the hearing for a definite period of time, the commission shall
25 hold a hearing and render a decision in writing not later than the
26 30th day after the date on which it receives the notice of appeal.
27 The decision of the commission shall state whether or not the

1 suspended officer or employee is permanently dismissed, or
2 temporarily suspended from the fire or police department, or
3 restored to his former position or status in the classified service
4 in the department. If the commission finds that the period of
5 disciplinary suspension should be reduced, it may order a reduction
6 in the period of suspension. If the suspended officer or employee
7 is restored to the position or class of service from which he was
8 suspended, the officer or employee shall receive full compensation
9 at the rate of pay provided for the position or class of service
10 from which he was suspended for the actual time lost as a result of
11 the suspension. All hearings of the commission in case of a
12 suspension are public. The commission may deliberate the decision
13 in closed session but may not consider evidence that was not
14 presented at the hearing. The commission shall vote in open
15 session. The written statement filed by the department head with
16 the commission shall point out the civil service rule alleged to
17 have been violated by the suspended officer or employee and shall
18 contain the alleged acts of the officer or employee that the
19 department head contends are in violation of the civil service
20 rules. It is not sufficient for the department head merely to
21 refer to the provisions of the rules alleged to have been violated.
22 If the department head does not specifically point out the act or
23 acts complained of on the part of the officer or employee, the
24 commission shall promptly reinstate the officer or employee. In a
25 civil service hearing conducted under this subsection, the
26 department head is restricted to his original written statement and
27 charges which may not be amended. In the original written

1 statement and charges and in any hearing conducted under this
2 subsection, the department head may not complain of an act or acts
3 that occurred earlier than the 180th day immediately preceding the
4 date on which the department head suspends the officer or employee.
5 An officer or employee may not be suspended or dismissed by the
6 commission except for violation of the civil service rules, and
7 after a finding by the commission of the truth of specific charges
8 against the officer or employee.

9 SECTION 9. Chapter 325, Acts of the 50th Legislature,
10 Regular Session, 1947 (Article 1269m, Vernon's Texas Civil
11 Statutes), is amended by adding Sections 16c and 16d to read as
12 follows:

13 Sec. 16c. HEARING EXAMINERS. (a) In a city having a
14 population of less than 1,500,000 according to the most recent
15 federal census, in an appeal of an indefinite suspension, a
16 suspension, a promotional passover, or a recommended demotion, the
17 appealing employee may elect to appeal to an independent third
18 party hearing examiner instead of to the commission. To exercise
19 this choice, the appealing employee must submit a letter to the
20 director stating his decision to appeal to an independent third
21 party hearing examiner.

22 (b) The decision of the hearing examiner is final and
23 binding on all parties. If the employee decides to appeal to an
24 independent third party hearing examiner, the employee
25 automatically waives all rights to appeal to district court.

26 (c) If the appealing employee chooses to appeal to a hearing
27 examiner, the employee and the chief shall first attempt to

1 mutually agree on the selection of an impartial hearing examiner.
2 If an agreement is not reached on the selection of the hearing
3 examiner on or before the 10th day after the date the appeal is
4 filed, the director shall immediately request a list of seven
5 qualified neutral arbitrators from the American Arbitration
6 Association or Federal Mediation and Conciliation Service, or their
7 successor in function. The employee and the chief may mutually
8 agree on one of the seven neutral arbitrators on the list. If they
9 do not agree within five working days after receipt of the list,
10 each party shall alternate striking a name from the list and the
11 name remaining shall be the hearing examiner.

12 (d) The appeal hearing shall commence as soon as the hearing
13 examiner selected can be scheduled. If the hearing examiner cannot
14 commence the hearing within 45 calendar days after the date of
15 selection, the employee may, within two days of learning of that
16 fact, call for the selection of a new hearing examiner using the
17 same procedure as provided by Subsection (c) of this section.

18 (e) All fees and expenses of the hearing examiner are shared
19 equally by the appealing officer or employee and by the department.
20 The costs of witnesses for either side shall be paid by the party
21 who calls the witnesses.

22 (f) A state district court may hear appeals of an award of a
23 hearing examiner only on the grounds that the arbitration panel was
24 without jurisdiction or exceeded its jurisdiction or that the order
25 was procured by fraud, collusion, or other unlawful means. An
26 appeal must be brought in the state district court having
27 jurisdiction in the municipality in which the department is

1 located.

2 Sec. 16d. PROCEDURES AFTER CRIMINAL INDICTMENT. (a) In a
3 city having a population of less than 1,500,000 according to the
4 most recent federal census, if a fire fighter or police officer is
5 indicted for a felony or officially charged with the commission of
6 a Class A or B misdemeanor, the procedures prescribed by this
7 section apply.

8 (b) The head of the department may temporarily suspend the
9 fire fighter or police officer with or without pay. The head of
10 the department shall notify the fire fighter or police officer in
11 writing that he is being temporarily suspended with or without pay
12 for a period not to exceed 30 days after the date of final
13 disposition of the specified felony or misdemeanor complaint, and
14 that the temporary suspension is not intended to reflect an opinion
15 on the merits of the indictment or complaint.

16 (c) If the action directly related to the felony indictment
17 or misdemeanor complaint occurred or was discovered on or after the
18 180th day before the date of the indictment or complaint, the head
19 of the department may, not later than the 30th day after the date
20 of final disposition of the felony charge or misdemeanor complaint,
21 bring a civil service charge against the fire fighter or police
22 officer.

23 (d) Conviction of a felony is cause for dismissal, and
24 conviction of a Class A or B misdemeanor may be cause for
25 disciplinary action or indefinite suspension.

26 (e) Acquittal or dismissal of an indictment or a misdemeanor
27 complaint does not mean that a fire fighter or police officer has

1 not violated civil service rules or regulations and does not negate
2 the charges that may have been or may be brought against him by the
3 department head.

4 (f) A fire fighter or police officer indicted for a felony
5 or officially charged with the commission of a Class A or B
6 misdemeanor who has also been charged by the department head with
7 civil service violations directly related to the indictment or
8 misdemeanor complaint may delay the civil service hearing for a
9 period of not more than 30 days after final disposition of the
10 indictment or complaint.

11 (g) If the head of the department temporarily suspends a
12 fire fighter or police officer who has been indicted for a felony
13 or officially charged with a Class A or B misdemeanor, and the fire
14 fighter or police officer is not found guilty of the indictment or
15 complaint in the court of competent jurisdiction, the fire fighter
16 or police officer may appeal to the commission or to a hearing
17 examiner for recovery of back pay. The commission or hearing
18 examiner may award all or part of the back pay or reject the
19 appeal.

20 (h) The department head may order an indefinite suspension
21 based on an act or acts classified as a felony or a Class A or B
22 misdemeanor after the 180-day period after discovery of the act or
23 acts by the department if delay is considered necessary by the
24 department head to protect a criminal investigation of the
25 employee's conduct. If the department head intends to order an
26 indefinite suspension after the 180-day period, the department head
27 must file a statement describing the criminal investigation and its

1 objectives with the attorney general not later than the 180th day
2 after the date on which the act complained of occurred.

3 SECTION 10. Section 20, Chapter 325, Acts of the 50th
4 Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas
5 Civil Statutes), is amended to read as follows:

6 Sec. 20. UNCOMPENSATED DUTY. [DISCIPLINARY---SUSPENSIONS.]

7 (a) In this section, "uncompensated duty" means days of police
8 work without pay and in addition to regular or normal work days.

9 (b) In a city having a population of less than 1,500,000
10 according to the most recent federal census, the [The] head of
11 [either] the [Fire-or] Police Department may assign [shall-have-the
12 power-to-suspend] any officer or employee under his jurisdiction or
13 supervision to uncompensated duty. The chief or department head
14 may not impose uncompensated duty unless the officer or employee
15 agrees. The duty may be in place of or in combination with a
16 period of disciplinary suspension without pay. If uncompensated
17 duty is combined with a disciplinary suspension, the total number
18 of uncompensated duty days may not exceed 15. If the officer or
19 employee agrees to accept uncompensated duty, the chief or
20 department head shall give the officer or employee a written
21 statement that specifies the date or dates on which the officer or
22 employee will perform uncompensated duty [for--disciplinary
23 purposes,--for-reasonable-periods,--not-to-exceed-fifteen-(15)--days,
24 provided,--that--in-every-such-case,--the-department-head-shall-file
25 with-the-Commission-within-one-hundred-and-twenty--(120)--hours,--a
26 written--statement-of-action,--and-the-Commission-shall,--upon-appeal
27 from-the-suspended-officer-or-employee,--hold-a-public-hearing-under

1 Section-17-of-this-Ast,--The--Commission--shall--determine--whether
2 just-cause-exists-therefer,--in-the-event-the-department-head-fails
3 to--file--said-statement-with-the-Commission-within-one-hundred-and
4 twenty-(120)-hours,--the-suspension-shall-be-void-and--the--employee
5 shall--be--entitled--to-his-full-salary,--The-Commission-shall-have
6 the-power-to-reverse-the-decision-of-the--department--head--and--to
7 instruct--him--immediately-to-restore-such-employee-to-his-position
8 and-to-repay-the-employee-for-any-lost-wages,--if--the--Commission
9 finds-that-the-period-of-disciplinary-suspension-should-be-reduced,
10 it-may-order-a-reduction-in-the-period-of-suspension,--in-the-event
11 such--department--head-refuses-to-obey-the-order-of-the-Commission,
12 then-the-provisions-with-reference-to-salaries-of-the-employees-and
13 to-the-discharge-of-the--department--head--as--well--as--the--other
14 provisions--of--Section--16,--pertaining--to--such--refusal--of--the
15 department-head, shall apply].

16 (c) An officer or employee may not earn or accrue any wage,
17 salary, or benefit arising from length of service while the officer
18 or employee is suspended or performing uncompensated duty. A
19 disciplinary suspension does not constitute a break in a continuous
20 position or service in the department for the purpose of
21 determining eligibility for a promotional examination. The days on
22 which an officer or employee performs assigned uncompensated duty
23 may not be taken into consideration in determining eligibility for
24 a promotional examination. Except as provided by this subsection,
25 an officer or employee performing assigned uncompensated duty
26 retains all rights and privileges of his position in the Police
27 Department and of his employment by the city.

1 SECTION 11. Section 26, Chapter 325, Acts of the 50th
2 Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas
3 Civil Statutes), is amended to read as follows:

4 Sec. 26. SICK AND INJURY LEAVES OF ABSENCE. (a) Permanent
5 and temporary employees in the classified service shall be allowed
6 a total of sick leave with full pay computed upon a basis of one
7 and one-fourth (1-1/4) full working days allowed for each full
8 month employed in a calendar year, so as to total fifteen (15)
9 working days to an employee's credit each twelve (12) months.
10 Employees shall be allowed to accumulate fifteen (15) working days
11 of sick leave with pay in one (1) calendar year.

12 (b) Sick leave with pay may be accumulated without limit and
13 may be used while an employee is unable to work because of any bona
14 fide illness. In the event that the said employee can conclusively
15 prove that the illness was incurred while in performance of his
16 duties, an extension of sick leave in case of exhaustion of time
17 shall be granted.

18 (c) In the event that a Fireman or Policeman for any reason
19 leaves the classified service, he shall receive, in a lump sum
20 payment, the full amount of his salary for the period of his
21 accumulated sick leave, provided that if the Fireman or Policeman
22 has more than ninety (90) working days of accumulated sick leave,
23 the employer may limit the payment to that sum equal to the sum
24 that the employee would have been paid had he been allowed to use
25 the ninety (90) days of accumulated sick leave during the last six
26 (6) months of employment. [~~Provided, however, that such payments~~
27 ~~shall not be based upon more than ninety (90) working days of~~

1 ~~accumulated--sick--leave.]~~ The lump-sum payment provided in this
2 section is calculated as follows: the employee is compensated for
3 the accumulated time at the highest permanent classification of pay
4 for which the employee was eligible during the last six (6) months
5 of employment. The employee is paid for the same period of time
6 the employee would have been paid if the sick leave had been taken
7 but excluding additional holidays and any sick leave or vacation
8 time which the employee might have accrued during the ninety (90)
9 working days.

10 (d) If an active Fireman or Policeman dies as a result of a
11 line of duty injury or line of duty illness, the entire amount of
12 his accumulated sick leave shall be paid as provided in this
13 section. Provided, that in order to facilitate the settlement of
14 the accounts of deceased employees of the Fire or Police
15 Departments, all unpaid compensation due such employee at the time
16 of his death shall be paid to the person or persons surviving at
17 the date of death, in the following order or precedence and such
18 payments shall be a bar to recovery by any other person of amounts
19 so paid.

20 First, to the beneficiary or beneficiaries designated by the
21 employee in writing to receive such compensation filed with the
22 Civil Service Commission prior to the employee's death;

23 Second, if there be no such beneficiary, to the widow or
24 widower of such employee;

25 Third, if there be no such beneficiary or surviving spouse,
26 to the child or children of such employee, and descendants of
27 deceased children, by representation;

1 Fourth, if none of the above, to the parents of such
2 employee, or the survivor of them;

3 Fifth, if there be none of the above, to the duly appointed
4 legal representative of the estate of the deceased employee, or if
5 there be none, to the person or persons determined to be entitled
6 thereto under the laws of descent and distribution of the State of
7 Texas.

8 (e) Provided that all such cities coming under the
9 provisions of this Act shall provide injury leaves of absence and
10 line of duty illness leaves of absence for Firemen and Policemen
11 with full pay for periods of time commensurate with the nature of
12 the line of duty illness or injuries for at least one (1) year. At
13 the expiration of said one-year period, the City Council or
14 governing body may extend such line of duty illness or injury
15 leave, at full or reduced pay, provided that in cities that have a
16 Firemen's or Policemen's Pension Fund, that if said injured
17 employee's salary should be reduced below sixty per cent (60%) of
18 his regular monthly salary, said employee shall have the option of
19 being retired on pension until able to return to duty.

20 (f) If there are no pension benefits available to an
21 employee who is temporarily disabled by a line of duty injury or
22 illness and the year at full pay and any extensions which may have
23 been granted by the employer have expired, the employee may use
24 accumulated sick leave, vacation time, and other accrued benefits
25 before being temporarily placed on leave.

26 (g) If an employee is temporarily disabled by an injury or
27 illness not related to the employee's line of duty, the employee

1 may use all sick leave, vacation time, and any other time the
2 employee may have accumulated before being placed on temporary
3 leave.

4 (h) After recovery from a temporary disability, a Fireman or
5 Policeman shall be reinstated at the same rank and with the same
6 seniority the person had before going on temporary leave. Another
7 Fireman or Policeman may voluntarily do the work of an injured or
8 ill Fireman or Policeman until the Fireman or Policeman returns to
9 duty.

10 SECTION 12. Chapter 38, Acts of the 49th Legislature, 1945
11 (Article 1269p, Vernon's Texas Civil Statutes), is amended by
12 adding Section 6C to read as follows:

13 Sec. 6C. This Act does not prohibit the chief or head of a
14 police department from assigning a policeman under his jurisdiction
15 or supervision to work periods of uncompensated duty as prescribed
16 by Section 20, Chapter 325, Acts of the 50th Legislature, 1947
17 (Article 1269m, Vernon's Texas Civil Statutes). A period of
18 uncompensated duty may not be considered or otherwise taken into
19 account in determining compliance with this Act, and Sections 1, 3,
20 3a, and 6A of this Act do not apply to or include periods of
21 uncompensated duty to which a policeman is assigned.

22 SECTION 13. This Act takes effect September 1, 1983.

23 SECTION 14. The importance of this legislation and the
24 crowded condition of the calendars in both houses create an
25 emergency and an imperative public necessity that the
26 constitutional rule requiring bills to be read on three several
27 days in each house be suspended, and this rule is hereby suspended.

H.B. No. 1015

President of the Senate

Speaker of the House

I certify that H.B. No. 1015 was passed by the House on May 23, 1983, by a non-record vote, and that the House concurred in Senate amendments to H.B. No. 1015 on May 30, 1983, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 1015 was passed by the Senate, with amendments, on May 27, 1983, by the following vote: Yeas 28, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

H. B. No. 1015

A BILL TO BE ENTITLED
AN ACT

By Bill Mendenhall
Prof. C. E. Kelly MAY 23 1983

relating to firemen's and policemen's civil service.

FEB 24 1983

1. Filed with the Chief Clerk.

MAR 9 1983

2. Read first time and Referred to Committee on

Urban Affairs

5/5/83

3. Reported favorably (as substituted) and sent to Printer at 10:05 ^{MAY 16 1983}

4. Printed and distributed at 2:57 pm

MAY 16 1983

5. Sent to Committee on Calendars at 3:43 pm

MAY 20 1983

6. Read second time (amended) passed to third reading (failed) by (Non-Record Vote) (Record Vote of 131 yeas, 6 nays, 1 present, not voting).

7. Motion to reconsider and table the vote by which H. B. _____ was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____ present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. _____ was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

MAY 23 1983

12. Ordered Engrossed at 2:40 pm

MAY 23 1983

13. Engrossed.

MAY 23 1983

14. Returned to Chief Clerk at 4:20 pm

MAY 24 1983

15. Sent to Senate.

Betty Mendenhall
Chief Clerk of the House

MAY 24 1983

16. Received from the House

MAY 24 1983

17. Read, referred to Committee on INTERGOVERNMENTAL RELATIONS

MAY 27 1983

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

20. Ordered not printed.

MAY 27 1983

21. Regular order of business suspended by H.C. (Record Vote of _____ yeas, _____ nays.)

22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.

MAY 27 1983

23. Read second time AMENDED passed to third reading by: in viva voce vote _____ yeas, _____ nays.

MAY 27 1983

24. Caption ordered amended to conform to body of bill.

MAY 27 1983

25. Senate and Constitutional 3-Day Rules suspended by vote of 27 yeas, 1 nays to place bill on third reading and final passage.

MAY 27 1983

26. Read third time and passed by in viva voce vote 28 yeas, 0 nays.

OTHER ACTION:

OTHER ACTION:

Betty King
Secretary of the Senate

5-27-83

27. Returned to the House.

MAY 27 1983

28. Received from the Senate (with amendments) (as substituted).

MAY 27 1983

29. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record) (Vote) (Record Vote of _____ yeas, _____ nays, _____ present, _____ not voting).

Mason, Chair, Pierce, Ertankay, Plumbo, June

MAY 27 1983

30. Conference Committee Ordered.

31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

32. Ordered Enrolled at _____

MAY 30 1983

Conference Committee Disolved
and House Concurred in
Senate on amendment
to HB 1015 by non-record vote

1983 MAY 23 PM 4:20

U.S. HOUSE OF REPRESENTATIVES

MAY 30 1983

Ordered Enrolled 755

MAY 18 1983 PM 2:57

MAY 20 1983 PM 11:27

URBAN AFFAIRS

COMPARATIVE ANALYSIS BETWEEN
HOUSE BILL 1015 BY BILL NESSER
AND COMMITTEE SUBSTITUTE

1. House Bill 1015 provides that not all employees of the fire department are in Civil Service Status by deleting existing language in Section 2. The Committee Substitute does not amend Section 2.
2. House Bill 1015 deletes the three (3) year residency requirement for the Director of Civil Service for all cities. The Committee Substitute deletes the residency requirement for only cities of less than 1,500,000.
3. House Bill 1015 adds certification pay to the list of types of pay which must be paid in all cities in addition to base pay. The Committee Substitute adds certification pay only to cities of less than 1,500,000.
4. House Bill 1015 allows for the optional procedure whereby the Department Head in all cities can appoint all persons serving in the two positions immediately below Department Head. The Committee Substitute provides for the alternate appointment procedure only in non-collective bargaining cities of less than 1,500,000 and only for the persons serving in the classification immediately below Department Head in certain circumstances.
5. House Bill 1015 and the Committee Substitute both make assignment pay optional in cities of less than 1,500,000. The Committee Substitute also makes it optional to pay assignment pay to those who qualify for assignment duty but who do not actually serve.
6. House Bill 1015 contains provisions relating to termination and reinstatement of employees who have a permanent disability. The Committee Substitute does not contain such provisions.
7. House Bill 1015 contains provisions providing in all cities for an optional promotion system consisting of a written and oral exam. The Committee Substitute provides for optional promotion systems in cities of less than 1,500,000 but does not specify the nature of the optional system.
8. House Bill 1015 contains new provisions relating to the qualifications for Police or Fire Chief. The Committee Substitute contains no such provisions.
9. House Bill 1015 contains provisions requiring the Civil Service Commission to hear an appeal within thirty (30) days of receipt of the appeal in lieu of the current requirement that both the appeal be heard and a decision rendered within the thirty (30) days. No corresponding changes in the Committee Substitute.
10. House Bill 1015 provides in all cities for suspension of employees charged with certain crimes within six (6) months of discovery that the person may have committed the crime and for suspension after the six (6) months if this is considered necessary to protect the criminal investigation. The Committee Substitute has different and more comprehensive provisions on this subject. (See Bill Analysis on Committee Substitute.)
11. House Bill 1015 does not contain provisions allowing an employee to accept a sixteen (16) to ninety (90) day suspension in lieu of an indefinite suspension whereas the Committee Substitute does contain such provisions for cities of less than 1,500,000.
12. House Bill 1015 provides that the Civil Service Commission will determine if just cause exists for all demotions and suspensions and not just for those appealed to it. The Committee Substitute has no such provisions.

EXHIBIT 2

13. House Bill 1015 contains provisions relating to declaring a person's position vacant who is temporarily disabled and who has been on unpaid leave for ninety (90) days. The Committee Substitute has no such provisions.
14. House Bill 1015 has amendments relating to the repeal of the adoption of Article 1269m by cities. The Committee Substitute has no such amendments.
15. House Bill 1015 has no provisions for the use of a third-party examiner to hear appeals rather than having them heard by the Civil Service Commission whereas the Committee Substitute contains such provisions regarding cities of less than 1,500,000.
16. Both House Bill 1015 and the Committee Substitute provide for the performance of uncompensated duty in lieu of a suspension.
17. House Bill 1015 does not make the payment of sick leave above ninety (90) days optional whereas the Committee Substitute does.
18. House Bill 1015 does not contain provisions whereby the terms of the Act can be altered on a local option basis whereas the Committee Substitute contains such provisions.

Summary of Committee Action

Pursuant to a notice posted in accordance with the House Rules on April 23, 1983, House Bill 1015 was considered in a public hearing on April 28, 1983. Representative Messer presented a substitute bill for consideration by the committee. Testifying in support of the proposed substitute were the following: David Griffin, representing the Texas Municipal League and the TML 1269m Task Force; Ronald G. DeFord, representing the Combined Law Enforcement Associations of Texas; Don O'Dell, representing the Texas State Association of Fire Fighters; Kathy Wetherby, representing the City of Fort Worth; and Charlie B. Shapard, representing the City of Fort Worth. Recognized as being present to testify in support of the measure were Thomas P. Foster and Rita P. Harmon, both representing the City of Lubbock. Testifying against the measure were the following: Danny Stamper, representing the Austin Association of Professional Fire Fighters; Jerry Spain, representing the Texas Municipal Police Association; David Mullican, representing himself; Jim Hyde, representing the Texas Municipal Police Association, the Pasadena Police Officers Association, and the Pasadena Law Enforcement Association; Don Adams, representing the Temple Police Association; Preston Hairgrove, representing himself; and Al Holcom, representing the Texas Municipal Police Association and the Baytown Police Association. The bill was referred to subcommittee. The subcommittee convened in a formal meeting on May 4, 1983. At that meeting the subcommittee adopted the substitute and reported it favorably back to the committee. The committee considered the subcommittee report on May 10, 1983, and the motion to report C.S.H.B. 1015 favorably carried with a vote of 10 Ayes, 1 Nay, 1 PNW, and 3 Absent.

URBAN AFFAIRS

H.B. 1015 by Messer
C.S.H.B. 1015 by Eikenburg

Political Divisions Affected:
Cities over 10,000 with
Firemen's and Policemen's Civil
Service Commissions

Background Information

Article 1269m, V.T.C.S., regulates the appointment, promotion, discipline, suspension, demotion, termination and political activity of policemen and firemen in Texas cities which have a population of 10,000 or more inhabitants and which have voted to adopt the provisions of Article 1269m.

Purpose and Synopsis

The Committee Substitute amends Article 1269m to provide (1) that in cities of less than 1,500,000 the Director of Civil Service does not have to have resided within the city for three (3) years prior to appointment (2) that in non-collective bargaining cities of less than 1,500,000 the City Council may authorize the Department Head to appoint and remove persons in the position immediately below the position of Department Head (3) that in cities of less than 1,500,000 certification pay is one of the types of pay which must be received in addition to regular or base pay (4) that in cities of less than 1,500,000 assignment pay is optional with the City Council (5) that a Civil Service Commission in a city of less than 1,500,000, upon a majority vote approval of police officers voting and upon the recommendation of the Chief of Police, may adopt alternate promotional examination systems (6) that in cities of less than 1,500,000 the Department Head may offer the fireman or officer a sixteen (16) to ninety (90) day suspension and if accepted by the officer or fireman he/she waives any right to appeal to court (7) that in cities of less than 1,500,000 an employee may select to use an independent third-party hearing examiner instead of the Civil Service Commission to hear his/her appeal and if this option is selected court appeal is waived (8) that the Department Head in cities of less than 1,500,000 has several options relating to taking action against an employee indicted for a felony or charged with a Class A or B misdemeanor (9) that in cities of less than 1,500,000 Department Head and employee may agree on uncompensated service rather than suspension (10) that payment of sick leave above ninety (90) days is permissive (11) that in cities of less than 1,500,000 provisions of 1269m (except some specified provisions) can be altered if the new Section 29 is adopted by the City Council upon the recommendation of the City's Chief Executive and upon the recommendation of a majority of the members of the department. If the new Section 29 is so adopted, local amendments to 1269m can occur if recommended by the Chief, approved by the Chief Executive, approved by a majority of the members of the department and adopted by the City Council.

Section-by-Section Analysis

Section 1. Amends Section 6 of the Act by removing the three (3) year residency requirements for Director of Civil Service except for Houston.

Section 2. Amends Section 8 of the Act to keep amendments relating to appointments by Department Heads from affecting Houston.

Section 3. Amends Section 8 of the Act by adding a Section 8A. This Section will allow in cities of less than 1,500,000 appointment and removal by the Department Head of persons in the classification immediately below the Chief under these conditions:

- (a) The Department has four (4) classifications below Chief
- (b) City Council approves it

EXHIBIT 3

- (c) The number of persons that may be appointed the Chief of Police shall not exceed one more than were in the classification on January 1st, 1983.
- (d) Fire Chiefs shall not appoint to the classification immediately below him more than:
 - [1] One person in fire departments with less than 300 certified fire fighters
 - [2] Two persons in fire departments with 300 to 600 certified fire fighters
 - [3] Three persons in fire departments with 600 or more certified fire fighters
- (e) The appointment procedure is prohibited in collective bargaining cities and Houston.
- (f) Limits appointments to those persons who have been employed in that department two (2) years or more and can qualify for certification at the intermediate level within two (2) years.
- (g) Grandfathers those already in classification immediately below Chief.
- (h) Provides for return to permanent classification to those appointed by Chief when his or her services are no longer wanted by the Chief.

(This Section also adds certification pay to the pay each person is entitled to receive.)

(This Section also allows all names on an eligibility list to be used.)

Section 4. Adds a new Section 8C which allows assignment pay at option of City Council of city of less than 1,500,000 for those in specialized assignments. Also allows them to extend the pay to those who qualify themselves for the specialized assignment if they want to. Provides for equal application of criteria set for assignment pay.

Section 5. Reenacts one of the two almost identical Sections 14A which were accidentally put into the law by two different amendments in 1979.

Section 6. Amends Section 14D to allow Civil Service Commission in cities of less than 1,500,000 to adopt, upon a majority vote of police officers voting in an election and upon the recommendation of the Chief of Police, alternate promotional examination systems. In addition provision is made for removal of the alternate system after six (6) months upon the petition of the Chief or upon petition and majority vote of the police officers. Collective bargaining cities are exempt from the alternate promotional examination provisions.

Section 7. Amends Section 16 by making the present provision relating to indefinite suspension applicable to only cities over 1,500,000.

Section 8. Amends 1269m by making the current provisions relating to indefinite suspension applicable to only cities over 1,500,000. This section also allows the Chief in cities of less than 1,500,000 to offer in lieu of indefinite suspension a sixteen (16) to ninety (90) day suspension without a right of appeal.

Section 9. Amends the Act by adding new Sections 16c and 16d to apply to all civil service cities of less than 1,500,000.

Section 16c. Provides for the use of independent thirty-party hearing examiner instead of the Commission if the appealing employee elects to use the examiner he waives all right to appeal to District Court. The examiner may be used on promotions, passovers, suspensions, or demotions.

Section 16d. (a) Provides procedure for when an employee is indicted for a felony or charged with a Class A or B misdemeanor.

(b) Allows Chief to suspend, with prejudice, with or without pay until thirty (30) days after final disposition of case.

(c) Allows the Chief to bring Civil Service charges at any time up to thirty (30) days after final disposition of case provided it was related to the case and occurred or was discovered within one hundred eighty (180) days prior to indictment or misdemeanor charge.

(d) Makes conviction of felony cause for dismissal. Makes conviction of a misdemeanor cause for disciplinary action.

(e) States that acquittal of a case does not mean that civil service charges are negated.

(f) Allows employees to postpone until after final disposition of a felony or misdemeanor any hearing on a related civil service charge.

(g) Allows temporary suspended employee who is not found guilty of indictment or charge to appeal to civil service or hearing examiner for lost pay.

(h) Allows Chief to postpone bringing charges to protect criminal investigation by notifying the State Attorney General within one hundred eighty (180) days of act complained of.

Section 10. Amends Section 20 by putting a new section which allows the Chief of Police in cities of less than 1,500,000 and a disciplined police officer to agree on uncompensated duty instead of lost pay.

Section 11. Amends Section 26 to make payment of sick leave above ninety (90) days permissive.

Section 12. Amends the Act by adding a new Section 29 which can be adopted by the governing body of any city of less than 1,500,000 covered by 1269m if (1) the Chief Executive of the City recommends the adoption of Section 29 (2) a public hearing on the issue has been held by the Civil Service Commission (3) the fire fighters and/or police officers have been given thirty (30) days notice of the election and (4) a majority of the fire fighters and/or police officers vote to recommend the adoption of Section 29. If Section 29 is adopted, then certain provisions of 1269m can be amended if Chief of Police or Fire Chief, initiates the amendment, Chief Executive approves it, police officers or fire fighters approve it and City Council adopts it. Any amendment adopted must be repealed after two (2) years if the Chief of Police/Fire Chief and the Chief Executive recommends it. Also, any amendment must be repealed after two (2) years if thirty-five percent (35%) of fire fighters/police officers petition for an election on the matter and the result of the election is a majority in favor of repeal.

Section 13. Amends Article 1269p to protect the city from wage and hour laws when assigning police officers disciplinary uncompensated duty.

Section 14. Sets September 1st, 1983, as the effective date of the Act.

Section 15. Emergency clause.

Rulemaking Authority

It is the Committee's opinion that this bill does not delegate rulemaking authority to a state officer agency, department, or institution.

HB1014 AUTHOR: Martinez, Roman, ET AL SPONSOR:
 Relating to sentencing alternatives for persons charged with or convicted of
 injury of a child or an elderly individual.
 HOUSE COMM: Criminal Jurisprudence SUBCOMM: Criminal Jurisprudence
 COUNCIL DRAFT: 68R3505 GWK-D COMPANION DOCUMENT:
 SUBJECT (S): Parole, Probation & Pardons
 Crimes--Against Persons
 Aging

H Filed 2-24-83
 H Read first time 3-09-83 463
 H Referred to Committee on Criminal Jurisprudence 3-09-83 463
 H Coauthor authorized 3-09-83 469
 H Coauthor authorized 4-21-83 567
 H Coauthor authorized 4-13-83 985

HB1015 AUTHOR: Messer, ET AL SPONSOR: Lyon
 Relating to firemen's and policemen's civil service.
 HOUSE COMM: Urban Affairs SUBCOMM: Miscellaneous
 SENATE COMM: Intergovernmental Relations SUBCOMM: Intergovernmental Relations
 COUNCIL DRAFT: 68R2543 CBH-F COMPANION DOCUMENT: SB568
 SUBJECT (S): Firefighters & Police

REMARKS:
 House Subcommittee members: English-chairman, Cain, Connelly, Ekenburg,
 Polumbo. Tagged in Senate Committee, 5/24/83. House Conferees: Messer-Chair,
 Pierce, Ekenburg, Polumbo, Leonard. Senate Conferees: Lyon-Chairman, Traeger,
 Farmer, Sharp, Brooks.

H Filed 2-24-83
 H Read first time 3-09-83 463
 H Referred to Committee on Urban Affairs 3-09-83 463
 H Coauthor authorized 3-09-83 469
 H Coauthor authorized 4-05-83 817
 H Scheduled for public hearing on 4-26-83
 H Postponed 4-26-83
 H Posting rule suspended 4-28-83 1,403
 H Considered by committee in public hearing 4-28-83
 H Referred to subcommittee 5-28-83
 H Considered by subcommittee in formal meeting 5-04-83
 H Reported from subcommittee with substitute 5-04-83
 H Considered by committee in public hearing 5-10-83
 H Reported from committee favorably with substitute 5-10-83 2,365
 H Committee report printed and sent to Committee on Calendars 5-16-83
 H Placed on daily Major State Calendar 5-19-83
 H Read second time (committee substitute) 5-20-83 2,726
 H Amendments offered 5-20-83 2,742
 H Record vote 5-20-83 2,742
 H Amended 5-20-83 2,742
 H Amendments offered 5-20-83 2,743
 H Passed to engrossment as amended 5-20-83 2,743
 H Record vote 5-20-83 2,770
 H Coauthor authorized 5-23-83 2,803
 H Rules suspended 5-23-83 2,804
 H Read third time 5-23-83 2,804
 H Passed 5-23-83 2,804
 H Nonrecord vote recorded in Journal 5-23-83 2,960
 H Reported engrossed 5-23-83
 H Sent to the Senate as amended 5-24-83
 H House passage reported 5-24-83 1,556
 H Read first time 5-24-83 1,583
 H Referred to Committee on Intergovernmental Relations 5-24-83 1,583
 H Posting rule suspended 5-24-83 1,615
 H See remarks 5-24-83
 H No action taken 5-24-83
 H posting rule suspended 5-26-83 1,848
 H Considered by committee in public hearing 5-26-83
 H Testimony taken 5-27-83
 H Reported from committee favorably without amendments 5-27-83 1,854
 H Motion withdrawn 5-27-83 1,930
 H Rules suspended 5-27-83 1,930
 H Read second time 5-27-83 1,930
 H Amended 5-27-83 1,930
 H Passed to third reading as amended 5-27-83 1,930
 H Rules suspended 5-27-83 1,930
 H Read third time 5-27-83 1,930
 H Passed as amended 5-27-83 1,930
 H Record vote 5-27-83 1,930
 H Returned from the Senate 5-27-83 1,930
 H House refused to concur in Senate amendments 5-27-83 1,930
 H Conference committee requested 5-27-83 1,930
 H House conferees appointed 5-27-83 1,930
 H Conference committee requested 5-28-83 1,991
 H Senate conferees appointed with instructions 5-28-83 1,991
 H Record vote 5-28-83 1,991
 H Senate granted request for conference committee 5-28-83 1,991
 H Senate conferees appointed 5-28-83 1,991
 H Senate conferees discharged 5-30-83 1,991
 H House amendment laid before the Senate 5-30-83 1,991
 H Motion to concur in House amendments 5-30-83 1,991
 H Senate concurs in House amendments 5-30-83 1,991
 H Member vote recorded in Journal 5-30-83 1,991
 H House conferees discharged 5-30-83 1,991
 H Text of Senate amendments 5-30-83 1,991
 H House concurred in Senate amendments 5-30-83 1,991
 H Nonrecord vote recorded in Journal 5-30-83 1,991
 H Reported enrolled 5-30-83 1,991
 H Signed in the House 5-30-83 1,991

S Signed in the Senate
H Sent to the Governor
H Signed by the Governor
H Effective on

ACTION JRN PAGE
DATE PAGE
5-30-83 2,376
6-06-83 3,696
6-17-83
9-01-83

HB1016 AUTHOR: Simpson SPONSOR:
Relating to insurance on certain state-owned property.
HOUSE COMM: Insurance SUBCOMM: Miscellaneous
COUNCIL DRAFT: 68R4018 SHH-F COMPANION DOCUMENT:
SUBJECT (S): Insurance--Fire & Allied Lines
Public Lands, Buildings & Resources

REMARKS:
House Subcommittee Members on Budget & Oversight: A.Smith-Chran, Patrick,
Gavin, D. Lee, Green.

H Filed 2-24-83
H Read first time 3-09-83 463
H Referred to Committee on Insurance 3-09-83 463
H Scheduled for public hearing on 3-22-83
H Considered by committee in public hearing 3-22-83
H Referred to subcommittee 3-22-83
H Scheduled for formal meeting on 4-20-83
H Considered by subcommittee in formal meeting 4-20-83
H No action taken 4-20-83

HB1017 AUTHOR: Simpson, ET AL SPONSOR:
Relating to the creation and duties of the Texas Cultural Awards Committee.
HOUSE COMM: Cultural and Historical Resources SUBCOMM: Miscellaneous
SENATE COMM: State Affairs SUBCOMM: State Affairs
COUNCIL DRAFT: 68R0717 PEC-F COMPANION DOCUMENT:
SUBJECT (S): Arts & Humanities
State Agencies, Newly Proposed

REMARKS:
House Subcommittee: Emmett, A. Hill, Oliveira.

H Filed 2-24-83
H Read first time 3-09-83 463
H Referred to Committee on Cultural and Historical Resources 3-09-83 463
H Scheduled for public hearing on 3-21-83
H Considered by committee in public hearing 3-21-83
H Referred to subcommittee 3-21-83
H Coauthor authorized 4-23-83 636
H Considered by subcommittee in formal meeting 4-26-83
H Reported from subcommittee with substitute 4-25-83
H Considered by committee in public hearing 4-25-83
H Reported from committee favorably with substitute 4-25-83 1,449
H Comm. report printed & sent to Comm. on Local & Consent Cal. 4-28-83
H Placed on daily Consent Calendar 4-28-83
H Withdrawn from calendar 4-28-83 1,642
H Placed on daily General State Calendar 4-28-83
H Read second time (committee substitute) 4-28-83 2,286
H Passed to engrossment 4-28-83 2,288
H Read third time 4-28-83 2,425
H Passed 4-28-83 2,425
H Nonrecord vote recorded in Journal 4-28-83 2,562
H Reported engrossed 4-28-83
H Sent to the Senate 4-28-83
S House passage reported 4-28-83 1,352
S Read first time 4-28-83 1,360
S Referred to Committee on State Affairs 4-28-83 1,360

HB1018 AUTHOR: Russell SPONSOR: Howard
Relating to the authority of rural fire prevention districts to issue bonds,
notes, and bond anticipation notes.
HOUSE COMM: County Affairs SUBCOMM: Miscellaneous
SENATE COMM: Intergovernmental Relations SUBCOMM: Intergovernmental Relatio
COUNCIL DRAFT: 68R2441 SHH-F COMPANION DOCUMENT:
SUBJECT (S): Special Districts & Authorities--Miscellaneous

REMARKS:
House Subcommittee to be named later by the chair.

H Filed 2-24-83
H Read first time 3-09-83 463
H Referred to Committee on County Affairs 3-09-83 463
H Posting rule suspended 3-05-83 1,620
H Scheduled for public hearing on 3-06-83
H Considered by committee in public hearing 3-06-83
H Referred to subcommittee 3-06-83
H Scheduled for formal meeting on 3-16-83
H Considered by subcommittee in formal meeting 3-16-83
H Reported from subcommittee with substitute 3-16-83
H Considered by committee in public hearing 3-18-83
H Reported from committee favorably with substitute 3-18-83 2,635
H Comm. report printed & sent to Comm. on Local & Consent Cal. 3-19-83
H Placed on daily Consent Calendar 3-24-83
H Read second time (committee substitute) 3-24-83
H Passed to engrossment 3-24-83
H Nonrecord vote recorded in Journal 3-24-83
H Rules suspended 3-24-83
H Read third time 3-24-83
H Passed 3-24-83
H Nonrecord vote recorded in Journal 3-24-83
H Reported engrossed 3-24-83
H Sent to the Senate 3-25-83
S House passage reported 3-25-83 1,617
S Read first time 3-25-83 1,724
S Referred to Committee on Intergovernmental Relations 3-25-83 1,726
S Posting rule suspended 3-26-83 1,848
S Considered by committee in public hearing 3-27-83

AFFIDAVIT OF MICHAEL HIGGINS

STATE OF TEXAS §

COUNTY OF TRAVIS §

I, Michael Higgins am over 21 years of age and am competent to make this affidavit. Having been placed under oath and sworn to tell the truth, I hereby do solemnly swear that the following facts are of my own personal knowledge and are true and correct.

1. My name is Michael Higgins. My current postal address is 7901 Taranto Drive, Austin, Texas 78729.

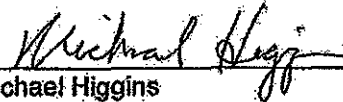
2. My current employment is Chief of Staff / Legislative Director for the Texas State Association of Fire Fighters (TSAFF). I have been employed full time by the Association for over 21 years. During this time, a portion of my duties has been to assist affiliated local associations with contract negotiations under Local Government Code Chapter 174, the Fire and Police Employee Relations Act (FPERA) formerly Article 5154c-1, V.T.C.S..

3. Chapter 174 (applied to members of the fire department) has been adopted by the voters in 29 political subdivisions in Texas, 27 of which are municipalities. The successful adoption of the Act has been repealed in three (3) of those municipalities. 21 of the municipalities currently covered by the Act have also adopted Local Government Code Chapter 143 (LGC 143) for the members of the municipality's fire department. Three (3) of these political subdivisions have only recently voted to adopt the Act, and to date have not negotiated their first contract.

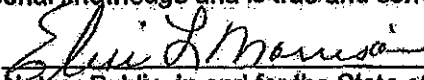
4. During my tenure with the TSAFF I negotiated contracts in 15 of the 21 municipalities. Including renewal contracts as well as initial contracts, this is more than 80 labor agreements. In my experience over the years, the application of LGC 143.014 has been that the entire appointment process in a municipality that is subject to FPERA does not apply unless the parties agree to adopt the process through a collective bargaining agreement.

5. Prior to my employment with the TSAFF, beginning in February of 1978 I served as a fire fighter employed by the City of Sherman. The voters of that city had adopted the provisions of FPERA for members of the fire department as well as the police department; however the adoption has since been repealed. Beginning in 1979 I served as the president of the Sherman Fire Fighter's Association with part of my duties to include contract negotiations. In 1983 when the amendment at issue was pending, I traveled to Austin to visit our Senator and State Representative about that specific legislation. We were concerned that the appointment process would hamper contract negotiations due to the fact that this was a topic of bargaining and it should be left to the parties whether to or whether to not allow the appointments. This reason is why, to the best of my knowledge, the language was included in the legislation that the change in Chapter 143 would not be effective in any respect in cities where the voters had adopted FPERA. Without this exemption, the legislation could have nullified provisions of existing contracts and would have negatively impacted future contract negotiations.

I have read this affidavit, which consists of 2 pages including this page, and have been given an opportunity to make any corrections. I have given this affidavit voluntarily and of my own free choice and, by my signature below, swear that it is true and correct.


Michael Higgins

SWORN TO AND SUBSCRIBED before the undersigned notary public who states that on this 8th day of August, 2009 personally appeared before me Michael Higgins who being by me duly sworn on his oath deposed and said that each and every statement in the foregoing affidavit is within his personal knowledge and is true and correct.


Notary Public, in and for the State of Texas

My commission expires: 12-13-09

