

House Bill 3352
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

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

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

SENATE VERSION

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

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

SECTION 2. Same as House version.

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SECTION 2. Sections 143.1015(e), (f), and (i), Local Government Code, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

SECTION 3. Section 143.1016, Local Government Code, is amended by amending Subsections (a), (d), (e), (h), and (k) and adding Subsection (l) to read as follows:

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

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

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SECTION 4. Same as House version.

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

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by this subsection, the department head or his designee shall select the hearing examiner [~~arbitrator~~] from the list provided.

(e) The appeal hearing must begin within 60 days after the date the appeal is filed and shall begin as soon as the hearing examiner can be scheduled. If the hearing examiner cannot begin the hearing within 45 calendar days after the date of selection, the fire fighter or police officer may, within two days after learning of that fact, call for the selection of a new hearing examiner using the procedure prescribed by Subsection (d) or a procedure established in an agreement pursuant to Subchapter J. If the appeal hearing is not begun within 60 days after the date the appeal is filed, the indefinite suspension, suspension, promotional pass over, or recommended demotion is upheld and the appeal is withdrawn if the fire fighter or police officer is not ready to proceed, and the appeal is sustained if the department head is not ready to proceed. In computing the 60-day period, a period of delay not to exceed 30 calendar days because of a continuance granted at the request of the department head or his representative or the fire fighter or police officer or his representative on good cause being shown, or because of the unavoidable unavailability of the hearing examiner on the date of the hearing, or because of the pendency of a motion to consolidate with another hearing as provided in Subsection (l) [~~(k) of this section~~] is excluded. In no event may a hearing examiner grant a continuance beyond 30 days in an indefinite suspension. A hearing examiner may grant a continuance beyond the

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30-day period upon good cause being shown in a disciplinary suspension unless the fire fighter or police officer has another disciplinary action pending.

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

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

(1) pursuant to Subsection (d); or

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

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

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cases is filed and not agreed to, a hearing examiner shall be chosen to hear the motion pursuant to the provisions of Subsection (d) or in accordance with a procedure established in an agreement pursuant to Subchapter J [~~of this section to hear the motion~~]. The decision of the hearing examiner shall be final and binding as to the issue of consolidation. The hearing examiner chosen to hear the motion to consolidate shall not hear the case, and the provisions of Subsection (d) or of a selection procedure established in an agreement pursuant to Subchapter J [~~of this section~~] shall be used to choose the hearing examiner with the day the decision is rendered being the equivalent of the date the appeal was filed.

No equivalent provision.

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

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

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

(1) makes a proper application;

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

(3) meets the requirements prescribed by this chapter.

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

(d) An eligibility list for a beginning peace officer position in the police department may be created only as a result of the examination. Except as provided by Subsection (f), the examination must be held in the presence of each examinee. The examination must be based on the examinee's general knowledge and aptitude and must inquire into the examinee's general education and mental ability. A person may not be appointed to the police department except as a result of the examination.

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

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

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(1) take the same examination; and
(2) be examined in the presence of other examinees.
(g) An additional five points shall be added to the examination grade of an examinee who:
(1) served in the United States armed forces;
(2) received an honorable discharge from that service;
and
(3) made a passing grade on the examination.
(h) The grade to be placed on the eligibility list for each examinee shall be computed by adding an examinee's points under Subsection (g), if any, to the examinee's grade on the written examination. Each examinee's grade on the written examination is based on a maximum grade of 100 percent and is determined entirely by the correctness of the examinee's answers to the questions. The minimum passing grade on the examination is 70 percent. An examinee must pass the examination to be placed on an eligibility list.

No equivalent provision.

SECTION 6. Section 143.105, Local Government Code, is amended to read as follows:
Sec. 143.105. ELIGIBILITY FOR BEGINNING POSITION IN POLICE DEPARTMENT. In addition to meeting the eligibility requirements prescribed by Section 143.023, to be certified as eligible for a beginning position with a police department, a person must[~~;~~
[~~(1)~~] be at least 21 years of age at the end of the probationary period and have: [~~;~~]

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(1) ~~[(2) have]~~ served in the United States armed forces and received an honorable discharge; ~~[or]~~
(2) ~~[(3) have]~~ earned at least 60 hours' credit in any area of study at an accredited college or university; or
(3) been employed full-time for at least five years as a peace officer licensed by:
(A) the Commission on Law Enforcement Officer Standards and Education; or
(B) an acceptable licensing entity in another state that has law enforcement officer licensing requirements substantially equivalent to those of Chapter 1701, Occupations Code.

No equivalent provision.

SECTION 7. Section 143.352(2), Local Government Code, is amended to read as follows:
(2) "Police employee group" means an organization:
(A) in which at least three percent of the police officers of the municipality participate ~~[and pay dues via automatic payroll deduction]~~; and
(B) which exists for the purpose, in whole or part, of dealing with the municipality concerning grievances, labor disputes, wages, rates of pay, benefits other than pension benefits, hours of employment, or conditions of work affecting police officers.

No equivalent provision.

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

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Sec. 143.355. AUTOMATIC PAYROLL DEDUCTION OF POLICE EMPLOYEE GROUP DUES. A public employer that has recognized a police employee group as the sole and exclusive bargaining agent under Section 143.354 shall deduct police employee group dues via automatic payroll deduction for members of the employee group that has been recognized as the bargaining agent. Automatic payroll deduction for members of other police employee groups may be authorized by agreement between the chief executive officer of the public employer and the recognized bargaining agent.

SECTION 4. The changes in law made by this Act to Sections 143.057(d), 143.1015, and 143.1016, Local Government Code, apply only to an appeal initiated by a firefighter or police officer on or after the effective date of this Act. An appeal initiated before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 9. Same as House version.

No equivalent provision.

SECTION 10. Section 143.1041, Local Government Code, as added by this Act, and the changes in law made by this Act to Section 143.025, Local Government Code, apply only to an examination administered for a position as a beginning peace officer on or after the effective date of this Act. An examination administered before the

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effective date of this Act and matters dependent on the examination are governed by the law in effect at the time the examination was administered, and the prior law is continued in effect for this purpose.

No equivalent provision.

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

SECTION 5. This Act takes effect September 1, 2007.

SECTION 12. Same as House version.