

## CHAPTER 910

## H.B. No. 1657

An Act relating to fire fighters' and police officers' civil services; providing a penalty.

*Be it enacted by the Legislature of the State of Texas:*

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

**Sec. 3. FIRE FIGHTERS' AND POLICE OFFICERS' [FIREMEN'S AND POLICE/MEN'S] CIVIL SERVICE COMMISSION.** (a) There is hereby established in all such cities a *Fire Fighters' and Police Officers' [Firemen's and Policemen's]* Civil Service Commission, which shall consist of three (3) members, to be selected as follows: Members of the Commission shall be appointed by the chief executive of any such city, and such appointment shall be confirmed by the City Council or legislative body of any such city before any such appointments shall be effective. Of the first three (3) Commissioners so selected under the provisions of this Act to comprise the Commission, one (1) shall be appointed for a term of one (1) year, one (1) shall be appointed for a term of two (2) years, and one (1) shall be appointed for a term of three (3) years. Thereafter the term of office of each Commissioner shall be for three (3) years, or until a successor is appointed, confirmed, and qualified. Any such vacancies in said Commission, caused by death, resignation, or otherwise, or by failure of any appointee to qualify within ten (10) days after appointment, shall be filled in the manner hereinabove specified, and such appointment shall be for the unexpired term of the retiring Commissioner of the appointee failing to qualify.

(b) All such Commissioners shall be of good moral character, *citizens of the United States*, resident citizens of the particular city for which they are appointed, shall have resided in said city for a period of more than three (3) years, shall each be over the age of twenty-five (25) years, and shall not have held any public office within the preceding three (3) years.

(c) It is provided however, that in all such cities which have in existence a Civil Service Commission, that said Civil Service Commission shall constitute the *Fire Fighters' and Police Officers' [Firemen's and Policemen's]* Civil Service Commission of that city, but said Commissioner shall administer the Civil Service of *Fire Fighters and Police Officers [Firemen and Policemen]* in accordance with this law.

(d) It is further provided that in any such city which has in existence a Civil Service Commission, the appointment of members to such Civil Service Commission shall be made in conformity with provisions of this Act, after the expiration of presently existing term or terms of the members comprising such Civil Service Commission and, if necessary, in such cities having staggered terms of membership on such Civil Service Commission, the first appointment made under the provisions of this Act shall be made for terms of such number of years less than three (3) as will cause a staggered or rotating system of terms to conform with the provisions of this Act.

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

**Sec. 3A. REMOVAL OF COMMISSIONER.** (a) *If at a meeting held for that purpose the city council or legislative body of the city finds that a commissioner is guilty of misconduct in office, the city council or legislative body of the city may remove the commissioner. The commissioner may request that the meeting be held as an open hearing in accordance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).*

(b) *If a commissioner is indicted or charged by information with a criminal offense involving moral turpitude, the commissioner shall be automatically suspended from office. The suspension shall last until the disposition of the charge. Unless the commissioner pleads guilty or is found to be guilty, the commissioner shall resume office at the time of disposition of the charge.*

(c) *The city council or legislative body of the city may appoint a substitute commissioner during a period of suspension. If a commissioner pleads guilty to or is found to be guilty of a criminal offense involving moral turpitude, the city council or legislative body of the city shall appoint a replacement commissioner to serve the remainder of the disqualified commissioner's term of office.*

**SECTION 3.** Sections 8A(e) and (l), Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), are amended to read as follows:

(e) All *promotional* vacancies in classifications other than the classification immediately below that of the chief or department head which is selected and filled by the chief or department

head shall be filled by permanent appointment from eligibility lists furnished by the commission within 60 days after the vacancy occurs. If before the expiration of the current eligibility list a vacancy occurs in a classification other than an entry level classification or a classification immediately below that of the chief or department head which is filled by the chief or department head, the commission shall submit names from the list to the department head until the vacancy is filled or the list is exhausted. If no list is in existence, the vacancy shall be filled from a list which the commission shall provide within 90 days after the vacancy occurs.

(1) The city council or legislative body of a city may authorize educational incentive pay in addition to regular pay for a fire fighter or police officer [fireman or policeman] who has successfully completed courses at an accredited college or university if the criteria for the educational incentive pay are clearly established, are in writing, and are applied equally to all fire fighters and police officers [firemen and policemen] meeting the criteria. If all fire fighters or police officers [firemen or policemen] are afforded an opportunity to qualify themselves for certification, certification pay may be authorized by the city council or legislative body of the city in addition to regular pay for those fire fighters [firemen] meeting the requirements for certification set by the Commission on Fire Protection Personnel Standards and Education or for those police officers meeting the requirements for certification set by the Commission on Law Enforcement Officer Standards and Education.

**SECTION 4.** Sections 9, 13, and 14, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), are amended to read as follows:

**Sec. 9. EXAMINATION FOR ELIGIBILITY LISTS.** (a) The Commission shall make provisions for open, competitive and free examinations for persons making proper application and meeting the requirements as herein prescribed. All eligibility lists for applicants for original positions in the Fire and Police Departments shall be created only as a result of such examinations, and no appointments shall ever be made for any position in such Departments except as a result of such examination, which shall be based on the applicant's knowledge of and qualifications for fire fighting and work in the Fire Department, or for police work and work in the Police Department, as shown by competitive examinations in the presence of all applicants for such position, and shall provide for thorough inquiry into the applicant's general education and mental ability. Fire Department entrance examinations may be given at different locations if all applicants are given the same examination and examined in the presence of other applicants. An applicant may not take the examination more than once for each eligibility list. An applicant may not take an examination unless at least one (1) other applicant being tested is present.

(b) An applicant who has served in the armed forces of the United States and who received an honorable discharge shall receive five (5) points in addition to his competitive grades.

(c) The Commission shall keep all eligibility lists for applicants for original positions in the Fire Department or Police Department in effect for not less than six (6) months nor more than twelve (12) months unless the names of all applicants have been referred to the appropriate Department. The Commission shall give [a] new examinations [examination] at times the Commission considers necessary to provide the required staffing for scheduled fire or police training academies [the end of the twelve (12) month period or sooner, if applicable, or if all names on the list have been referred to the appropriate Department]. The Commission shall determine how long each eligibility list shall remain in effect within the six (6) to twelve (12) month period and shall include this information on the eligibility announcement.

(d) Appropriate physical examinations shall be required of all applicants for beginning or promotional positions, and the examinations shall be given by a physician appointed by the Commission and paid by such city; and in the event of rejection by such physician, the applicant may call for further examination by a board of three (3) physicians appointed by the Commission, but at the expense of the applicant, whose findings shall be final. The age and physical requirements shall be set by the Commission in accordance with provisions of this law and shall be the same for all applicants.

(e) An applicant may not be certified as eligible for a beginning position with a Fire Department unless the applicant meets all legal requirements necessary to become eligible for future certification by the Commission on Fire Protection Personnel Standards and Education. An applicant may not be certified as eligible for a beginning position with a Police Department unless the applicant meets all legal requirements necessary to become eligible for future licensure by the Commission on Law Enforcement Officer Standards and Education.

(f) No person shall be certified as eligible for a beginning position with a Fire Department who has reached his thirty-sixth birthday. No person shall be certified as eligible for a beginning position with a Police Department who has reached his thirty-sixth birthday unless the applicant has at least five (5) years prior experience as a peace officer, or 5 years of military experience. No person shall be certified as eligible for a beginning position with a Police Department who has reached his forty-fifth birthday.

(g) All police officers and fire fighters [firemen] coming under this Act must be able to intelligently read and write the English language.

(h) When a question arises as to whether a fire fighter or police officer [fireman or policeman] is sufficiently physically fit to continue his duties, the employee shall submit a report from his personal physician to the Commission. If the Commission, the head of the Department, or the employee questions the report, the Commission shall appoint a physician to examine the employee and to submit a report to the Commission, to the head of the Department, and to the employee. If the appointed physician's report disagrees with the report of the employee's personal physician, the Commission shall appoint a board of three (3) physicians to examine the employee. Their findings as to the employee's fitness for duty shall determine the issue. The cost of the services of the employee's personal physician shall be paid by the employee. All other costs shall be paid by the city.

(i) A fire fighter or police officer [fireman or policeman] who has been certified by a physician selected by a fire fighters' or police officers' [firemen's or policemen's] relief or retirement fund as having recovered from a disability for which he has been receiving a monthly disability pension shall, with the approval of the Commission and if otherwise qualified, be eligible for reappointment to the classified position that he held as of the date that he qualified for a monthly disability pension.

Sec. 13. NOTICE OF EXAMINATIONS. At least ten (10) days in advance of any entrance examination and at least thirty (30) days in advance of any examination for promotion, the Commission shall cause to be posted on a bulletin board located in the main lobby of the city hall, and the office of the Commission, and in plain view, a notice of such examination, and said notice shall show the position to be filled or for which examination is to be held, with date, time, and place thereof, and in case of examination for promotion, copies of such notice shall be furnished in quantities sufficient for posting in the various stations or subdepartments in which position is to be filled. No one under eighteen (18) years of age shall take any entrance examination, and appointees to the Police and Fire Department shall not have reached their thirty-sixth birthday for entrance into the Fire Department or Police Department. The individual raw test scores [results] of each examination for promotion shall be posted on a bulletin board located in the main lobby of the city hall by the Commission within twenty-four (24) hours after such examination.

Sec. 14. PROMOTIONS; FILLING VACANCIES. The Commission shall make rules and regulations governing promotions and shall hold promotional examinations to provide eligibility lists for each classification in the Police and Fire Departments, which examinations shall be held substantially under the following requirements:

A. (1) All promotional examinations shall be open to all police officers [policemen] who have held a continuous position for two (2) years or more immediately prior to the examination in the classification immediately below, in salary, that classification for which the examination is to be held. In police departments that have adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, all promotional examinations shall be open to a police officer [policeman] who has held a continuous position for two (2) years or more immediately prior to the examination at the next lower paygrade, if it exists, in the classification for which the promotional examination is being offered. When there is not a sufficient number of members in the next lower position with two (2) years' service in that position to provide an adequate number of persons to take the examination, the Commission shall open the examination to members in that position with less than two (2) years' service. If there is still an insufficient number, the Commission may extend the examination to the members in the second lower position in salary to that for which the examination is to be held.

(2) In any city having a population of 1,500,000 or more, according to the most recent federal census, all [All] promotional examinations shall be open to all fire fighters [firemen] who have ever held a continuous position for two (2) years or more in the classification immediately below, in salary, that classification for which the examination is being held. In fire departments that have adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, all promotional examinations shall be open to a fire fighter [fireman] who has [ever] held a continuous position for two (2) years or more at the next lower paygrade, if it exists, in the class for which the promotional examination is being offered. This section may not be construed to prohibit lateral crossover between classes. If there are not enough members in the next lower position with two (2) years' service in that position to provide an adequate number of persons to take the examination, the Commission may open the examination to members in that position with less than two (2) years' service. If there is still an insufficient number, the Commission may extend the examination to the members in the second lower position in salary to that for which the examination is to be held with two (2) years' service in that position.

(3) *In any city having a population of less than 1,500,000, according to the most recent federal census, all promotional examinations shall be open to all fire fighters who have ever held a continuous position for two (2) years or more in the classification immediately below, in salary, that classification for which the examination is being held. In fire departments that have adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, all promotional examinations shall be open to a fire fighter who has held a continuous position for two (2) years or more at the next lower paygrade, if it exists, in the class for which the promotional examination is being offered. However, if a fire fighter had previously terminated his employment with the department and was subsequently reemployed by the same department, the fire fighter must again meet the two (2) year service requirement for eligibility to take a promotional examination. In determining if a fire fighter has met the two (2) year service requirement, a Fire Department may not consider service in another Fire Department. This section may not be construed to prohibit lateral crossover between classes. If there are not enough members in the next lower position with two (2) years' service in that position to provide an adequate number of persons to take the examination, the Commission may open the examination to members in that position with less than two (2) years' service. If there is still an insufficient number, the Commission may extend the examination to the members in the second lower position in salary to that for which the examination is to be held with two (2) years' service in that position.*

B. Each fire fighter [fireman] shall be given one (1) point for each year of seniority in his Department, but never to exceed ten (10) points. Each police officer [policeman] shall be given one (1) point for each year of seniority as a classified police officer in his Department, but never to exceed ten (10) points.

C. The Commission may formulate proper procedure and rules for semi-annual efficiency reports and grade of each member of the Police or Fire Departments. If the Commission compiles efficiency reports for members of the Police or Fire Department, the Commission shall provide a copy of a member's efficiency report to the member. Any fire fighter [fireman] or police officer [policeman] may, within ten (10) days after receiving his efficiency report, make a statement in writing about the efficiency report. The statement shall be placed in his personnel file with the efficiency report.

D. (1)(a) Except as prescribed by Subdivision (6) of this subsection, all applicants shall be given an identical examination in the presence of each other, which promotional examination shall be entirely in writing and no part of which shall be by oral interview, and all of the questions asked therein shall be prepared and composed in such a manner that the grading of the examination papers can be promptly completed immediately after the holding of the examination and shall be prepared so as to test the knowledge of the applicants concerning information and facts, and all of said questions shall be based upon material which is a reasonably current publication and has been made reasonably available to all members of the Fire or Police Department involved and shall be based upon the duties of the position sought and upon any study courses given by such Departmental Schools of Instruction. All promotional examination questions must be taken from sources that are listed in a notice that is posted by the Commission at least ninety (90) [thirty (30)] days before the date of the examination. Fire fighters or police officers [Firemen or policemen] may suggest source materials for promotional examinations. The thirty (30) day notice required by Section 13 of this Act may include the name of each source used and the number of questions taken from each source. The Commission may include the chapter of each source. When one of the applicants taking an examination for promotion has completed his answers, the grading of such examination shall begin, and all of the examination papers shall be graded as they are completed, at the place where the examination is given and in the presence of any applicants who wish to remain during the grading.

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

(2) Except as prescribed by Subdivision (6) of this subsection, the grade which shall be placed on the eligibility list for each police officer [policeman] applicant shall be computed by adding such police officer [policeman] applicant's points for seniority to his grade on such written examination. Grades on such written examinations shall be based upon a maximum grade of one hundred (100) points and shall be determined entirely by the correctness of each applicant's answers to such questions. *In any city having a population of 1,500,000 or more, according to the most recent federal census, all test participants receiving a grade of seventy (70) points or more*

shall be determined to have passed an examination. In any city having a population of less than 1,500,000, according to the most recent federal census, all test participants receiving a grade of seventy (70) points or more, or the top thirty (30) percent of the test participants who receive the highest grades, whichever is greater, shall be determined to have passed an examination. If a tie score occurs, the commission shall determine the method to be used to break the tie [The minimum passing score for the written examination is seventy (70) points].

(3) The grade which shall be placed on the eligibility list for each fire fighter [fireman] applicant shall be computed by adding the fire fighter [fireman] applicant's points for seniority to his grade on the written examination. Grades on the written examination shall be based on a maximum grade of one hundred (100) points and shall be determined entirely by the correctness of each fire fighter [fireman] applicant's answers to the questions. In any city having a population of 1,500,000 or more, according to the most recent federal census, all test participants receiving a grade of seventy (70) points or more shall be determined to have passed an examination. In any city having a population of less than 1,500,000, according to the most recent federal census, all test participants receiving a grade of seventy (70) points or more, or the top thirty (30) percent of the test participants who receive the highest grades, whichever is greater, shall be determined to have passed an examination. If a tie score occurs, the commission shall determine the method to be used to break the tie [The minimum passing score for the written examination is seventy (70) points].

(4) Each applicant shall have the opportunity to examine the source materials, his examination, and his answers thereto together with the grading thereof and if dissatisfied shall, within five (5) business [working] days, appeal the same to the Commission for review in accordance with the provisions of this Act. A business day is defined as Monday through Friday, excluding holidays. If an applicant requests, the applicant is entitled to see his promotional examination, answers, and source material as provided by this subdivision, but may not remove the examination or copy a question used in the examination.

(5) Except as prescribed by Section 8A of this Act, a fire fighter [fireman] is not eligible for promotion unless he has served in such Department for at least two (2) years at any time prior to the day of such promotional examination in the next lower position or other positions specified by the Commission, and no person with less than four (4) years' actual service in such Department shall be eligible for promotion to the rank of captain or its equivalent. Except as prescribed by Section 8A of this Act, a police officer [policeman] is not eligible for promotion unless the police officer [policeman] has served in the Department for at least two (2) years immediately preceding the date of the promotional examination in the next lower position or other positions specified by the Commission, and no person with less than four (4) years' actual service in the Department shall be eligible for promotion to the rank of captain or its equivalent. Provided, however, that the requirement of two (2) years' service in the Fire Department at any time prior to the day of promotional examination shall not be applicable to those persons recalled on active military duty for a period not to exceed twenty-four (24) months. The Police Department's requirement of two (2) years' service immediately preceding the date of the promotional examination does not apply to persons recalled to active military duty for a period not to exceed twenty-four (24) months. Such persons shall be entitled to have time spent on active military duty considered as duty in the Department concerned. However, any person whose absence for active military duty exceeds twelve (12) months, shall be required to serve ninety (90) days upon returning to the Department before he shall become eligible to participate in a promotional examination, such period of time to be considered essential for bringing him up to date on equipment and techniques.

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

(1) the Commission shall order the Director to conduct an election and to submit the revised promotional system by secret ballot to either all sworn police officers within the rank immediately below the classification for which the promotional examination is to be administered or to all sworn police officers in the department;

(2) the election shall be held no earlier than the thirtieth (30th) day after the day on which notice of the election is posted at the Department. The election shall be conducted throughout each regular work shift at an accessible location within the Department during a 24-hour period;

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

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

(5) a defeated promotional system amendment may not be placed on a ballot for vote before the sworn police officers for at least twelve (12) months after the date on which the prior election was held, *except that this subdivision does not apply if the Chief or Head of the Police Department recommends a different proposal to the Commission;*

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

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

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

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

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

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

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

(7) No person shall be eligible for appointment as Chief or Head of the Fire Department of any city coming under the provisions of this Act who is not eligible for certification by the Commission on Fire Protection Personnel Standards and Education at the intermediate level or its equivalent as determined by that Commission and who has not served at least five (5) years as a fully paid *fire fighter [fireman]*. No person may be eligible for appointment as Chief or Head of the Police Department who is not eligible for certification by the Commission on Law Enforcement Officer Standards and Education at the intermediate level or its equivalent as determined by that Commission and who has not served as a bona fide law enforcement officer for five (5) years.

(8)(a) *A person commits an offense if the person accepts money or anything of value from another person in return for retiring or resigning from the person's civil service position.*

(b) *A person commits an offense if the person gives money or anything of value to another person in return for the other person's retirement or resignation from his civil service position.*

(c) *An offense under this subdivision is a Class A misdemeanor.*

(9) *Subdivision (8) of this subsection does not apply to any city having a population of 1,500,000 or more, according to the most recent federal census.*

E. (1) Upon written request by the Heads of the Departments for a person to fill a vacancy in any classification, the Commission shall certify to the Head of the Department the three (3) names having the highest grades on such eligibility list for such classification for the vacancy requested to be filled. If fewer than three (3) names remain on the eligibility list, *or if only one (1) or two (2) applicants passed the written promotional examination, the name or [all the] names* must be submitted to the Head of the Department, and the Head of such Department shall appoint the person having the highest grade, except where such Head of the Department shall have a valid reason for not appointing such highest name, and in such cases he shall, before such appointment, *personally discuss his reasons with the officer being bypassed and file his reasons in writing, for rejection of the higher name or names, with the Commission, which reasons shall be valid and subject to review by the Commission upon the application of the officer being bypassed [such rejected person].*

(2) The name of each person on the eligibility lists shall be submitted to the Head of the Department three (3) times; and if passed over three (3) times with written reasons filed thereafter and not set aside by the Commission, he shall thereafter be dropped from the eligibility

list. All promotional eligibility lists shall remain in existence for one (1) year unless exhausted, and at the expiration of one (1) year they shall expire and new examinations may be given.

F. The Commission shall proceed to hold examinations to create eligibility lists within ninety (90) days after a vacancy in any classification occurs, or new positions are created, unless an eligibility list is in existence. If an eligibility list exists, the Commission shall certify within ten (10) days after notification of the vacancy to the Head of the Department the names of persons eligible to fill all promotional positions. The certified names must come from the eligibility list which exists on the date the vacancy occurs.

G. In the event any new classification is established either by name or by increase of salary, the same shall be filled by competitive examination in accordance with this law.

**SECTION 5.** Sections 16c(a), (c), and (d), Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) In a city having a population of less than 1,500,000 according to the most recent federal census, *the letter of disciplinary action issued to an employee shall state, in addition to other notice requirements prescribed by this Act, that in an appeal of an indefinite suspension, a suspension, a promotional passover, or a recommended demotion, the appealing employee may elect to appeal to an independent third party hearing examiner instead of to the commission. The letter must also state that if the employee elects to appeal to a hearing examiner, the employee waives all rights of appeal to a district court except as provided by Subsection (f) of this section.* To exercise this choice, the appealing employee must submit ~~a letter~~ to the director *a written request as part of the original notice of appeal required under Section 16b(b) of this Act* stating his decision to appeal to an independent third party hearing examiner.

(c) If the appealing employee chooses to appeal to a hearing examiner, the employee and the chief or their designees shall first attempt to mutually agree on the selection of an impartial hearing examiner. If an agreement is not reached on the selection of the hearing examiner on or before the 10th day after the date the appeal is filed, the director shall immediately request a list of seven qualified neutral arbitrators from the American Arbitration Association or Federal Mediation and Conciliation Service, or their successor in function. The employee and the chief or their designees may mutually agree on one of the seven neutral arbitrators on the list. If they do not agree within five working days after receipt of the list, each party or his designee shall alternate striking a name from the list and the name remaining shall be the hearing examiner. *The parties or their designees shall mutually agree on a date for the hearing.*

(d) The appeal hearing shall commence as soon as the hearing examiner selected can be scheduled. If the hearing examiner cannot commence the hearing within 45 calendar days after the date of selection, the employee may, within two days of learning of that fact, call for the selection of a new hearing examiner using the same procedure as provided by Subsection (c) of this section. *In all hearings conducted under this section, the hearing examiner shall have the same duties, powers, and authority as the commission, including the right to issue subpoenas. In a hearing held under this section, the parties may agree to an expedited hearing procedure. Unless otherwise agreed by the parties, in an expedited procedure the hearing examiner shall render a decision on the appeal within 10 days after the conclusion of the hearing. In appeals not involving an expedited hearing procedure, the hearing examiner shall make a reasonable effort to render a decision on an appeal within 30 days after the conclusion of the hearing or the filing of the briefs. The inability of the hearing examiner to meet the time requirement does not affect the validity of the disciplinary action or the hearing examiner's final decision or affect the jurisdiction of the hearing examiner.*

**SECTION 6.** Sections 18 and 19, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), are amended to read as follows:

**Sec. 18. APPEAL TO DISTRICT COURT.** In the event any *fire fighter or police officer [Fireman or Policeman]* is dissatisfied with any decision of the Commission, he may, within ten (10) days after the rendition of such final decision *is sent to the officer by certified mail or is personally received by the officer or by the officer's designee,* file a petition in the District Court, asking that the decision be set aside, and such case shall be tried de novo. The court in such actions may grant such legal or equitable relief as may be appropriate to effectuate the purposes of this Act, including reinstatement or promotion with back pay where an order of suspension, dismissal, or demotion is set aside. The court may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party. If the court finds for the *fire fighter or police officer [fireman or policeman],* the court shall order the city to pay lost wages to the *fire fighter or police officer [fireman or policeman].*

**Sec. 19. DEMOTIONS.** Whenever the head of the Fire Department or Police Department may desire the *involuntary* demotion to a lower rank of an officer or employee under his supervision or jurisdiction, such Department head may recommend in writing to the Commission that such employee be so demoted, giving his reasons therefor, and requesting that

the Commission make such order of demotion, furnishing a true copy of such recommendation immediately, in person, to the employee to be affected by such demotion. Said Commission shall have the authority to refuse to grant said request for demotion. If, however, said Commission feels that *probable* [~~probably~~] cause exists for said demotion, they shall give such employee ten (10) days advance written notice to appear before them at a time and place specified in said written notice to the employee, and said employee shall have the right to a full and complete public hearing upon such proposed demotion. The Commission shall not demote any employee without such hearing. *A voluntary demotion in which the officer accepting the demotion has in writing accepted the terms of the demotion is not subject to this section.*

**SECTION 7.** This Act takes effect September 1, 1985.

**SECTION 8.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 21, 1985, by a non-record vote; passed by the Senate on May 26, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 15, 1985

Effective: September 1, 1985