

CHAPTER 958

S.B. No. 540

An Act relating to civil service status, compensation, and benefits, including retirement, death, and disability benefits, of fire fighters, police officers, and certain other city employees, including those employed in specialized police divisions and relating to handling of grievances, complaints, interrogations, and investigations; amending Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), by amending Sections 2, 8, 9, 13, 14A, and 18 and Subsection (a), Section 8B; Subsection (a), Section 16b; Subsection (a), Section 16c; Subsection (a), Section 16d; Subsection (b), Section 26; adding Subsection (d) to Section 8B, Subdivisions (6) and (7) to Subsection (b), Section 8B; Sections 16e, 20A, 29, 30, 30A, and 14B; amending Chapter 432, Acts of the 64th Legislature, Regular Session, 1975, as amended (Article 6243e, Vernon's Texas Civil Statutes), by amending Sections 4, 6, 7, and 11 and adding Section 6A.

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

SECTION 1. Section 8, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 8. CLASSIFICATION OF FIREMEN AND POLICEMEN; EDUCATIONAL INCENTIVE PAY; APPOINTMENTS. (a) In a city having a population of 1,500,000 or more, according to the most recent federal census, the Commission shall provide for the classification of all firemen and policemen. Such classification shall be provided by ordinance of the City Council, or legislative body. Said City Council, or legislative body, shall prescribe by ordinance the number of positions of each classification.

"(b) *Except as expressly provided by Subsection (f) of this section, no [No] classification now in existence, or that may be hereafter created in such cities, shall ever be filled except by examination held in accordance with the provisions of this law. All persons in each classification shall be paid the same salary and in addition thereto be paid any of the following types of pay that they may be entitled to: (1) longevity pay; (2) seniority pay; (3) educational incentive pay; or (4) assignment pay. This shall not prevent the Head of such Department from designating some person from the next lower classification to fill a position in a higher classification temporarily, but any such person so designated by the Head of the Department shall be paid the base salary of such higher position plus his own longevity pay during the time he performs the duties thereof. The temporary performance of the duties of any such position by a person who has not been promoted in accordance with the provisions of this Act shall never be construed to promote such person. All vacancies shall be filled by permanent appointment from eligibility lists furnished by the Commission within sixty (60) days after such vacancy occurs. If no list is in existence, the vacancy shall be filled from a list which the Commission shall provide within ninety (90) days after such vacancy occurs.*

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

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

"(e) Said City Council or legislative body may authorize educational incentive pay in addition to regular pay for policemen and firemen within each classification, who have successfully completed courses in an accredited college or university, provided that such courses are applicable toward a degree in law enforcement-police science and include the core curriculum in law enforcement or are applicable toward a degree in fire science. An accredited college or

university, as that term is used herein, shall mean any college or university accredited by the nationally recognized accrediting agency and the state board of education in the state wherein said college or university is located and approved or certified by the Texas Commission on Law Enforcement Officer Standards and Education as teaching the core curriculum or its equivalent or, in the case of fire science degree courses, approved or certified by the Texas Commission on Fire Protection, Personnel Standards, and Education. Core curriculum in law enforcement, as used herein, shall mean those courses in law enforcement education as approved by the Coordinating Board, Texas College and University System and the Texas Commission on Law Enforcement Officer Standards and Education.

“(f) In any city having a population of 1,500,000 or more according to the most recent federal census, the Fire Chief or Police Chief may appoint persons to hold command staff positions in their departments subject to the following:

“(1) The Police Chief may appoint to any position at the rank of Assistant Chief any member of the classified service who has served for at least five (5) years in the department as a sworn police officer and who meets the additional required qualifying criteria for filling the positions that were established by the Police Chief and approved by a vote of two-thirds (2/3) of the city council present and voting. An appointment may not be made before the required qualifying criteria have been established and approved as prescribed by this subdivision.

“(2) The Fire Chief may appoint to any position at the rank of Assistant Chief any member of the classified service who has served for at least five (5) years in the department as a certified fire fighter and who meets the additional required qualifying criteria for filling the positions that were established by the Fire Chief and approved by a vote of two-thirds (2/3) of the city council present and voting. An appointment may not be made before the required qualifying criteria have been established and approved as prescribed by this subdivision.

“(3) The Fire Chief or Police Chief may remove any person appointed under this subsection without cause. If an appointee is removed without cause, the appointee shall be restored to that person's highest rank earned by competitive examination. However, if a person appointed under this subsection is temporarily or indefinitely suspended for cause from the appointive position, the suspension from the department is subject to the procedures for disciplinary action specified by this Act. If a person is indefinitely suspended for cause, the person does not have a right to reinstatement to the highest rank earned by competitive examination except to the extent that the indefinite suspension is reversed or modified by order of the commission or a hearing examiner.

“(4) A person occupying a position in a rank specified in Subdivision (1) or (2) of Subsection (f) of this section on the effective date of this subsection may not be removed except for cause in accordance with the procedures for disciplinary action or demotion specified by this Act.

“(5) A person occupying a position in a rank specified in Subdivision (1) or (2) of Subsection (f) of this section may voluntarily demote himself to his highest rank earned by competitive examination.

“(6) A person may remove himself from consideration for appointment to a position in a rank specified in Subdivision (1) or (2) of Subsection (f) of this section.

“(7) A person appointed under Subdivision (1) or (2) of Subsection (f) of this section may take any promotional examination for which the person would have been eligible under Section 14 of this Act.

“(8) A person appointed under the provisions of Subdivision (1) or (2) of Subsection (f) of this section shall be subject to confirmation by the governing body of the city.”

SECTION 2. Section 8B, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

“(a) In any city having a population of 1,500,000 or more, according to the most recent federal census, the city council or legislative body may authorize assignment pay for emergency ambulance attendants, ~~and~~ field training officers, and hazardous materials response team personnel in an amount and payable under conditions as set by ordinance. The assignment pay shall be in addition to the regular pay received by members of the fire department. The chief of the fire department is not eligible for the assignment pay authorized by this section.”

“(d) In any city having a population of 1,500,000 or more according to the most recent federal census, the city council or legislative body may authorize assignment pay for bilingual personnel performing specialized functions as interpreters or translators in their respective departments. The assignment pay is in an amount and payable under conditions set by ordinance. The assignment pay shall be in addition to the regular pay received by members of the fire or police department. If the ordinance applies equally to all persons meeting criteria established by the ordinance, the ordinance may provide for payment to each fire fighter or police officer who meets testing or other certification criteria for an assignment, or the ordinance may set criteria that will determine the foreign languages in which a person must be fluent or other criteria for eligibility. The ordinance

may provide for different rates of pay according to a person's capability and may allow more pay to those members who are capable of translating orally and into written English. The chiefs of the fire and police departments are not eligible for the assignment pay authorized by this subsection."

SECTION 3. Subsection (b), Section 8B, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (6) and (7) to read as follows:

"(6) 'Hazardous materials response team personnel' means a member of the fire department who is assigned to a hazardous materials response team and who actually stabilizes or participates in the stabilization of hazardous materials in an emergency.

"(7) 'Bilingual personnel' means a member of the fire or police department who in the performance of the member's duties is capable of effectively translating orally a language other than English into English, and when necessary, effectively translating the language into written English."

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

"Section 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 examination at 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) 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.

"(f) In a city having a population of 1,500,000 or more, according to the most recent federal census, a person may not be certified as eligible for a beginning position with a Police Department unless the person:

"(1) is at least 21 years of age at the end of the probationary period; or

"(2) served in the Armed Forces of the United States and received an honorable discharge; or

"(3) has earned at least sixty (60) hours' credit in any area of study at an accredited college or university.

"(g) All police officers and 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 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 fireman or policeman who has been certified by a physician selected by a 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.”

SECTION 5. Section 13, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon’s Texas Civil Statutes), is amended to read as follows:

“Section 13. **EXAMINATION PROCEDURE [NOTICE OF EXAMINATIONS].** (a) 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 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.

“(b) In a city having a population of 1,500,000 or more according to the most recent federal census, the Commission shall adopt rules to standardize the procedures for entrance and promotional examinations. The rules shall provide:

“(1) that each applicant has adequate space in which to take the examination;

“(2) that each applicant is provided with a desk;

“(3) that the room in which the examination is held has a public address system; and

“(4) the maximum number of times an applicant may leave the room and the procedure each applicant must follow when leaving or entering the room during the examination.

“(c) In a city having a population of 1,500,000 or more according to the most recent federal census, the city shall, at least thirty (30) days in advance of any examination for promotion, post a notice of the number of newly created positions. The notice must be posted in plain view on a bulletin board located in the main lobby of the city hall and in the office of the Commission. The city shall distribute the notice to all stations and subdepartments.”

SECTION 6. Subsection (a), Section 16b, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon’s Texas Civil Statutes), is amended to read as follows:

“(a) In a city having a population of 1,500,000 or more according to the most recent federal census, the head of either the fire or the police department may suspend an officer or employee under his jurisdiction or supervision for disciplinary purposes, for reasonable periods, not to exceed 15 days. *If offered by the chief or head of the department, the officer or employee may agree in writing to voluntarily accept, with no right of appeal, a suspension of not less than 16 nor more than 90 calendar days for violation of civil service rules. The officer or employee must accept the offer not later than the fifth working day after the offer is made. If the officer or employee refuses an offer of suspension of not less than 16 or more than 90 calendar days and wishes to appeal to the commission, the officer or employee must file a written appeal with the commission not later than the 15th day after the date the officer or employee receives the statement.* If the department suspends a person, the department head shall file with the commission not later than the 120th hour after the person is suspended a written statement of action, and the commission shall, on appeal of the suspended officer or employee, hold a public hearing as prescribed by Section 17 of this Act. The commission shall determine whether just cause exists for the suspension. If the department head fails to file the statement with the commission within the 120-hour time period, the suspension is void and the employee is entitled to his full salary. The commission may reverse the decision of the department head and instruct the department head

to immediately restore the employee to his position and to repay the employee for any lost wages. If the commission finds that the period of disciplinary suspension should be reduced, it may order a reduction in the period of suspension. If the department head refuses to obey the order of the commission, the provisions of Section 16 of this Act relating to salaries of employees, the discharge of the department head, and the other provisions relating to the refusal of the department head apply.

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

"(a) In a city in this state that has adopted this Act [~~having a population of less than 1,500,000 according to the most recent federal census~~], 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. To exercise this choice, the appealing employee must submit a letter to the director stating his decision to appeal to an independent third party hearing examiner."

SECTION 8. Subsection (a), Section 16d, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

"(a) In a city in this state that has adopted this Act [~~having a population of less than 1,500,000 according to the most recent federal census~~], if a fire fighter or police officer is indicted for a felony or officially charged with the commission of a Class A or B misdemeanor, the procedures prescribed by this section apply."

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

"Section 16e. **POLYGRAPH EXAMINATIONS.** In a city having a population of 1,500,000 or more according to the most recent federal census, a police officer or fire fighter employed by the city shall not be required to submit to a polygraph examination as part of an internal investigation regarding the conduct of the fire fighter or police officer unless and until the complainant submits to and passes a polygraph examination. The polygraph examination restriction does not apply if the complainant is physically or mentally incapable of being polygraphed. For the purposes of this section, a person 'passes' a polygraph examination if, in the opinion of the polygraph examiner, no deception is indicated regarding matters critical to the subject matter under investigation. The results of a polygraph examination that relate to the complaint under investigation are not admissible in a proceeding before the civil service commission or a hearing examiner. Nothing herein shall preclude the chief from ordering a police officer or fire fighter to submit to a polygraph examination when, in the exercise of his discretion, he considers the circumstances to be extraordinary and he believes that the integrity of a police officer or fire fighter or the department is in question."

SECTION 10. Section 18, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 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, file a petition in the District Court, asking that the decision be set aside, and such case shall be tried de novo. In a city having a population of 1,500,000 or more according to the most recent federal census, all appeals from an indefinite suspension shall be advanced on the District Court docket and shall be given a preference setting over all other cases. 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~~]."

SECTION 11. Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), is amended by adding Section 20A to read as follows:

"Section 20A. **UNCOMPENSATED DUTY IN CERTAIN CITIES.** (a) In this section, 'uncompensated duty' means days of work without pay in a fire or police department and does not include regular or normal work days.

“(b) In a city having a population of 1,500,000 or more according to the most recent federal census, the chief or head of the Fire or Police Department may assign any officer or employee under his jurisdiction or supervision to uncompensated duty. The chief or department head may not impose uncompensated duty unless the officer or employee agrees. The duty may be in place of or in combination with a period of disciplinary suspension without pay. If uncompensated duty is combined with a disciplinary suspension, the total number of uncompensated duty days may not exceed 15. If the officer or employee agrees in writing to accept uncompensated duty, the chief or department head shall give the officer or employee a written statement that specifies the date or dates on which the officer or employee will perform uncompensated duty. If the officer or employee agrees to accept uncompensated duty, the officer or employee does not have a right to administrative or judicial review.

“(c) An officer or employee may not earn or accrue any benefit arising from length of service or any wage or salary while the officer or employee is suspended or performing uncompensated duty. A disciplinary suspension does not constitute a break in a continuous position or service in the department for the purpose of determining eligibility for a promotional examination. Except as provided by this subsection, an officer or employee performing assigned uncompensated duty retains all rights and privileges of his position in the department and of his employment by the city.”

SECTION 12. Section 26(b), Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

“Section 26(b). **TERMINATION OF SERVICE, LUMP SUM PAYMENTS; CITIES OF 1,500,000 [1,200,000] OR MORE, ACCUMULATED SICK LEAVE; CITIES OF 650,000 OR MORE, ACCUMULATED VACATION LEAVE.** (a) In any city in this State having a population of one million, five ~~two~~ hundred thousand (1,500,000) [~~1,200,000~~] or more inhabitants, according to the last preceding federal census, a fireman or policeman who leaves the classified service for any reason or the beneficiaries of any fireman or policeman who loses his life as a result of a line of duty injury or illness shall receive in a lump sum payment the full amount of his ~~salary for the period of his~~ accumulated sick leave as provided by Subdivisions (1) and (2) of this subsection.

“(1) A fireman or policeman hired before September 1, 1985, shall have his sick leave ~~shall be~~ accumulated without limit. All sick leave accumulated before September 1, 1985, shall be valued at the fireman's or policeman's salary on August 31, 1985. Sick leave accumulated after September 1, 1985, shall be valued at the fireman's or policeman's average salary in the fiscal year in which the sick time was accumulated. Beginning September 1, 1985, each day or part of a day of sick leave used by a fireman or policeman shall be charged to that person's earliest acquired unused accumulated day of sick leave, in the same manner as is utilized in the first in, first out accounting principle. All firemen and policemen hired by the city before September 1, 1985, shall have a one-time option to select coverage under the city ordinance governing sick leave benefits and policy for the municipal employees who are not subject to this Act. The option terminates on December 31 of the year in which this section takes effect in the city.

“(2) The sick leave of any person who becomes a member of the fire or police department on or after September 1, 1985, shall be covered by the city ordinance governing sick leave benefits and policy for the municipal employees who are not subject to this Act.

“(3) Any city coming under this subsection shall provide, in its annual budget, a sum reasonably calculated to provide funding for sick leave benefits for the fiscal year covered by that budget.

“(b) In any city in this State having a population of six hundred and fifty thousand (650,000) or more inhabitants, according to the last preceding federal census, a fireman or policeman who leaves the classified service for any reason shall receive in a lump sum payment the full amount of his salary for the period of his accumulated vacation leave, provided that such payment shall be based upon not more than sixty (60) working days of accumulated vacation leave. Any fireman or policeman who leaves the classified service or loses his life as the result of a line of duty injury or illness or the beneficiaries of such fireman or policeman shall be paid the full amount of his salary for the total number of his working days of accumulated vacation leave.”

SECTION 13. Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), is amended by adding Section 29 to read as follows:

“Section 29. **GRIEVANCE PROCEDURE IN CERTAIN CITIES.** (a) In a city having a population of 1,500,000 or more according to the most recent federal census, a member of the fire or police department may file a grievance as prescribed by this section. A member of the fire or police department may file a grievance that relates to the same aspects of his employment over which the civil service commission for the employees of the city who are not subject to this Act would have lawful jurisdiction, except a grievance relating to:

"(1) any disciplinary or other action or decision for which a hearing, review, or appeal is otherwise provided by this Act; or

"(2) in whole or in part, an allegation of discrimination based on race, color, religion, sex, or national origin.

"(b) The civil service director shall monitor and assist the operation of the grievance procedure. The duties of the director include:

"(1) aiding the departments and departmental grievance counselors;

"(2) notifying the parties of meetings;

"(3) docketing cases before the grievance examiner; and

"(4) ensuring that the grievance procedure operates timely and effectively.

"(c) The chief of the department shall appoint from among the members of the department a grievance counselor whose duties include:

"(1) providing appropriate grievance forms to a member;

"(2) accepting, on behalf of the chief of the department, a step I or II grievance;

"(3) assisting the member in handling the grievance;

"(4) forwarding a copy of step I or II grievance forms to the director and notifying the chief of the department;

"(5) arranging a meeting between the aggrieved member and the member's immediate supervisor as prescribed by Paragraph (B) of Subdivision (1) of Subsection (d) of this section;

"(6) arranging the meeting between the member and the member's chief or the chief's designated representative as prescribed by Paragraph (B) of Subdivision (2) of Subsection (d) of this section; and

"(7) performing duties that may be assigned by the chief of the department.

"(d)(1) The grievance procedure consists of four steps. A member must file in writing a step I grievance as prescribed by this subdivision not later than the 30th day after the date on which the action or inaction for which the member feels aggrieved occurred. If the step I grievance form is not timely filed, the grievance is waived. The following procedure must be followed during step I:

"(A) An aggrieved member may obtain a grievance form from the departmental grievance counselor.

"(B) The member must return the form to the chief of the department or to the departmental grievance counselor, who shall arrange a meeting between the member, the member's immediate supervisor, and the person or persons against whom the grievance was lodged. If the grievance was lodged against the chief of the department, the chief may send his representative.

"(C) The immediate supervisor shall fully, candidly, and openly discuss the grievance with the member in a sincere attempt to resolve it.

"(D) Regardless of the outcome of the meeting, the immediate supervisor shall respond in writing to the member, with a copy to the grievance counselor, not later than the fifth working day after the date on which the meeting occurred. The response must include the supervisor's evaluation and proposed solution. The response shall either be personally delivered to the member or be mailed by certified mail, return receipt requested, to the last home address provided by the member.

"(E) If the proposed solution is not acceptable, the member may file a step II grievance form with the chief of the department or the departmental grievance counselor. If the aggrieved member fails to timely file a step II grievance form, the solution is considered accepted.

"(2) The following procedure must be followed during step II:

"(A) If the member rejects the proposed solution, the member must complete a step II grievance form and return it to the chief of the department or to the departmental grievance counselor not later than the fifth day after the date on which the member received the supervisor's response.

"(B) The departmental grievance counselor shall arrange a meeting between the member, the member's immediate supervisor, and the chief of the department or the chief's representative of at least the rank of assistant chief or the equivalent. The meeting must be held not later than the fifth working day after the date on which the step II grievance form was submitted to the chief or departmental grievance counselor.

"(C) Regardless of the outcome of the meeting, the chief or the chief's representative shall provide the member with a written response to the grievance not later than the 10th working day after the date on which the meeting occurred. The response shall either be personally delivered to the member or be mailed by certified mail, return receipt requested, to the last home address provided by the member.

"(D) If the proposed solution is not acceptable, the member may file a step III grievance form with the director. If the member fails to timely file a step III grievance form, the solution is considered accepted.

"(3) The following procedure must be followed during step III:

“(A) If the member rejects the proposed solution, the member must complete a step III grievance form and return it to the director not later than the 10th day after the date on which the member received the chief’s response.

“(B) The director shall arrange a hearing with the member and a grievance examiner to be chosen by the commission under Subsection (e) of this section. The hearing must be held not later than the 15th working day after the date on which the step III grievance form was submitted to the director.

“(C)(i) A hearing is conducted as an informal administrative procedure. Grievances arising out of the same or similar fact situations may be heard. A court reporter shall record the hearing. All witnesses shall be examined under oath.

“(ii) The member, the member’s immediate supervisor, the chief of the department, and all persons specifically named in the grievance are parties to the hearing.

“(iii) The burden of proof is on the aggrieved member.

“(D) The grievance examiner shall make written findings and a recommendation for solution of the grievance not later than the 10th working day after the date on which the hearing concluded. The findings and recommendation shall be given to the commission and copies mailed to the member by certified mail, return receipt requested, to the last home address provided by the member, and to the chief of the department.

“(E) If the proposed solution is not acceptable to either the member or the chief of the department, either party may file a step IV grievance form with the director. If the member or the chief fails to timely file a step IV grievance form, the solution is considered accepted.

“(4) The following steps must be followed during step IV:

“(A) If the chief or the member rejects the proposed solution, the chief or member must complete a step IV grievance form and return it to the director not later than the 10th day after the date on which the chief or member received the hearing examiner’s recommendation.

“(B) The commission shall review the grievance examiner’s findings and recommendation and consider the transcript of the hearing at the commission’s next regularly scheduled meeting or as soon as is practicable.

“(C) The commission’s decision shall be based solely on the transcript and demonstrative evidence offered and accepted at the step III hearing. The commission shall furnish the member, the chief of the department, and the grievance examiner with a written copy of its order. The copy to the member shall be mailed by certified mail, return receipt requested, to the last home address provided by the member. The decision of the commission is final.

“(e)(1) The commission shall appoint a grievance examiner by a majority vote. An examiner may not be affiliated with any other city department and is responsible only to the commission. The commission shall pay an examiner from a special budget established for this purpose, and the director shall provide an examiner sufficient office space and clerical support.

“(2) The commission may appoint more than one grievance examiner if more than one examiner is required. The commission may appoint a different grievance examiner for each grievance.

“(f) The grievance examiner appointed by the commission may:

“(1) impose a reasonable limit on the time allowed each party and the number of witnesses to be heard;

“(2) administer oaths;

“(3) examine a witness under oath;

“(4) subpoena and require the attendance or production of witnesses, documents, books, or other pertinent material; and

“(5) accept affidavits instead of or in addition to live testimony.

“(g) If the aggrieved member’s immediate supervisor is the chief of the department, the steps prescribed by Subdivisions (1) and (2) of Subsection (d) of this section are combined. The chief of the department shall meet with the aggrieved member and may not appoint a representative.

“(h)(1) A member may represent himself or obtain a representative at any time during the grievance procedure. The representative is not required to be an attorney. The city is not obligated to provide or pay the costs of providing representation.

“(2) A member may take reasonable time off from a job assignment to file a grievance and attend a meeting or hearing. Time taken to pursue a grievance may not be charged against a member.

“(i) A chief of a department, with the approval of the commission, may change the procedure prescribed by Subdivisions (1) and (2) of Subsection (d) of this section to reflect a change in a department’s chain of command.

“(j) If the final day to file a grievance form is on a Saturday, Sunday, or city holiday, the time period shall be extended through the next regular city work day.

“(k) The director shall provide a suitable notice explaining this grievance procedure and furnish copies to each department. Each chief of a department shall cause the notices to be posted in a prominent place or places within the work areas of the department so as to give reasonable notice of the grievance procedure to all members of the department.

“(l) If requested to do so by the chief of the department of a member who has filed a grievance under this procedure, the legal department of the city or the director shall assist in resolving the grievance.

“(m) The director is the official final custodian of all records involving grievances. A depository for closed files regarding grievances shall be maintained in the civil service department.”

SECTION 14. Section 4 of Chapter 432, Acts of the 64th Legislature, Regular Session, 1975, as amended (Article 6243e.2, Vernon’s Texas Civil Statutes), is amended to read as follows:

“Section 4. PENSION AND ADDITIONAL PENSION ALLOWANCES; SERVICE RETIREMENT; ELECTIONS; CONTRIBUTIONS; CERTIFICATE OF SERVICE; LIMITS; ANNUAL ADJUSTMENTS. (a) Any person who has been duly appointed and enrolled and who has attained the age of 50 years, and who has served actively for a period of 20 years or more and has participated in a fund in a city which is within the provisions of this Act, shall be entitled to be retired from the service or department and shall be entitled to be paid from the firemen’s relief and retirement fund of that city or town, a monthly pension equal to 50 percent of his average salary for the highest 36 months of his service. Any fireman shall be entitled to be paid in addition to the benefits provided for in this subsection an additional pension allowance of one percent of his average monthly salary for the highest 36 months during his participation for each year of service after the date on which such fireman shall be entitled to be retired.

“(b) A fireman who has 20 years of service and participation in a fund [~~under this section~~] may [~~if he so elects~~] be retired from the department and receive a monthly pension allowance of 35 percent of his average monthly salary for the highest 36 months during his participation. If the fireman shall participate in the fund for a period in excess of 20 years he shall, in addition to the monthly pension allowance of 35 percent be paid an additional monthly pension allowance equal to three percent of his average monthly salary for each year of service in excess of 20 years until the fireman completes 25 years of service thereby providing a monthly pension allowance equal to 50 percent of the fireman’s average monthly salary for the highest 36 months during his participation. If the fireman remains in the active service for a period in excess of 25 years, he shall receive, in addition to the pension allowances provided for in Subsection (b) of this section, an additional monthly pension allowance equal to one percent of his average salary for each year of participation in excess of 25 years.

“(c) From and after July 1, 1986, a fireman who completes 20 years of service and participation in this fund may be retired from the department and receive a monthly pension allowance of 40 percent of his average monthly salary for the highest 36 months during his participation. If the fireman shall participate in the fund for a period in excess of 20 years he shall, in addition to the monthly pension allowance of 40 percent, be paid upon retirement an additional monthly pension allowance equal to two percent of his average monthly salary for the highest 36 months during his participation for each year of service in excess of 20 years until the fireman completes 30 years of service, thereby providing a monthly pension not to exceed 60 percent of the fireman’s average monthly salary for the highest 36 months during his participation. If the fireman remains in the active service for a period in excess of 30 years, he shall receive a monthly pension of 60 percent of his average monthly salary for the highest 36 months during his participation.

“(d) The maximum pension allowance to be received by any fireman [~~under this section or Section 6 or 7 of this Act~~] shall not exceed 60 percent of the fireman’s average monthly salary for the highest 36 months during his participation *except as it may be adjusted pursuant to Subsection (g), (h), (i), or (j) of this section.*

“(e) [~~(k)~~] Any eligible and qualified fireman who has completed 20 years of service or more and of participation in a fund in a city to which this section is applicable, before reaching the age of 50 years, may apply to the board of trustees for, and the board shall issue, a certificate showing the completion of service and showing and certifying that the fireman, when reaching the age of 50 years, is entitled to the retirement and other applicable benefits of this Act. When any fireman is issued a certificate he is, when reaching retirement age, entitled to all the applicable benefits of this Act, even though he is not engaged in active service as a fireman after the issuance of the certificate. However, the fireman shall continue to pay his pension contribution monthly or in advance until the fireman reaches retirement age. Any fireman who does not make his pension contribution monthly or in advance shall automatically forfeit any retirement or other benefits he or his beneficiaries may have been entitled to under this Act.

“(f) [~~(e)~~] All firemen entering a fire department coming within the provisions of this section after the effective date of this Act shall retire under the benefit provisions of *either Subsection (a), (b), or (c) of this section unless the retirement is for disability.*

"(g) [(f)] All firemen who retire under the provisions of this section or Section 6 or 7 of this Act shall have their retirement allowances adjusted annually in accordance with the Consumer Price Index for Urban Consumers [~~Wage Earners and Clerical Workers~~] as determined by the United States Department of Labor. The adjusted pension allowance shall never be less than the amount granted the member on the date of his retirement without regard to changes in the consumer price index. The adjusted pension allowance shall never be more than the amount granted the member on the date of his retirement increased by three percent annually notwithstanding a greater increase in the consumer price index. *This subsection shall not apply in any instance where a retired fireman is eligible for an adjustment under Subsection (h) or (i) of this section.*

"(h) [(g)] All firemen who retire after March 1, 1982, under the provisions of this section or Section 6 or 7 of this Act upon reaching the age of 55 shall have their pensions adjusted annually upward or downward in accordance with the percentage change in the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor. The adjusted pension shall never be less than the basic pension granted the member on the date of his retirement without regard to changes in the consumer price index. The adjusted pension shall never be more than the amount granted the member on the date of his retirement increased by three percent annually not compounded, notwithstanding a greater increase in the consumer price index. The adjustment provided by this subsection shall be the only postretirement adjustment paid to firemen retiring after March 1, 1982.

"(i) *A pension that becomes payable after July 1, 1986, under the provisions of this section or Section 6 or 7 of this Act and that is based on the service of a fireman with 30 or more years of service or who has reached the age of 55 shall be adjusted annually upward or downward in accordance with the percentage change in the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor. Notwithstanding a greater change in the consumer price index, an annual adjustment may not exceed three (3) percent, not compounded. The total amount of a pension adjusted under this subsection may never be less than the basic pension granted at the time of retirement or death or more than the sum of the amount granted at the time of retirement or death plus an increase of three (3) percent annually, not compounded.*

"(j) [(h)] All pensioners who retired prior to May 3, 1971, or their survivors shall have their pensions increased in an ~~(adjusted on a one-time basis in an)~~ amount of \$100 [equal to 20 percent of their pension payment. However, in no instance shall the increase be less than \$15] a month. This postretirement adjustment shall be from and after January 1, 1986 [effective September 1, 1984]."

SECTION 15. Section 6, Chapter 432, Acts of the 64th Legislature, Regular Session, 1975, as amended (Article 6243e.2, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 6. **DISABILITY [RETIREMENT; AMOUNT OF PENSION; SERVICE RE/TIREMENT ELECTION].** (a) Whenever a fireman becomes physically or mentally disabled while in or as a consequence of the performance of his duty or becomes physically or mentally disabled from any cause whatsoever after he has participated in a fund for a period of 20 years or more, the board of trustees shall, on his request, or without a request, if they determine that the fireman is not capable of performing the usual and customary duties of his classification or position, retire the fireman on a monthly disability allowance of an amount equal to 50 percent of his average monthly salary for the highest 36 months during his service, or so much thereof as he may have served.

"(b) *Whenever a fireman becomes disabled from any cause other than a disability acquired in the performance of his duty as a fireman, a monthly pension allowance shall be paid to the fireman. Such monthly pension allowance shall be equal to 25 percent of the average monthly salary of the fireman, plus two and one-half percent of the average monthly salary for each full year of service and of participation in a fund, except that the monthly pension allowance shall not exceed 50 percent of the average monthly salary. The average monthly salary shall be based on the monthly average of the fireman's salary for the highest 36 months during service or so much as he may have served preceding the date of the retirement.*

"(c) If the fireman is eligible to be retired under the provisions of Section 4 of this Act, he may elect to have his monthly pension allowance calculated under that section."

SECTION 16. Section 7, Chapter 432, Acts of the 64th Legislature, Regular Session, 1975, as amended (Article 6243e.2, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 7. **CALCULATION OF BENEFITS UPON DEATH [OR DISABILITY FROM ANY CAUSE OTHER THAN PERFORMANCE OF DUTY; MONTHLY PENSION ALLOWANCE TO FIREMAN OR BENEFICIARY; COMPUTATION; SERVICE RE/TIREMENT ELECTION; ANNUAL ADJUSTMENT].** (a) *For the purpose of the calculation of the survivor benefits described in Section 11 of this Act, the pension amount being paid to a retired fireman at the time of his death shall be utilized. In any instance where a fireman dies*

before retirement or before pension benefits are commenced, the Board shall calculate the pension amount under the applicable sections of this Act and such amount shall be utilized for the calculation of survivor benefits.

"(b) Whenever a fireman dies in the course of the performance of his duty or dies after being placed on disability from injuries received during the performance of his duty, his benefits shall be calculated at 100 percent of his average monthly salary, the average monthly salary shall be based upon the monthly average of the fireman's salary for the highest 36 months during service.

"(a) Whenever a fireman dies or becomes disabled from any cause other than a disability acquired in the performance of his duty as a fireman, a monthly pension allowance shall be paid to the fireman or his beneficiaries:

"(b) The monthly pension allowance shall be computed as follows:

"(1) If the fireman becomes disabled, he shall be paid a monthly pension allowance equal to 25 percent of the average monthly salary of the fireman, plus two and one-half percent of the average monthly salary for each full year of service and of participation in a fund except that the monthly pension allowance shall not exceed 50 percent of the average monthly salary. The average monthly salary shall be based on the monthly average of the fireman's salary for the highest 36 months during his service, or so much as he may have served preceding the date of the retirement:

"(2) If the fireman was eligible to be retired under the provisions of Section 4 of this Act, he or his beneficiaries may elect to have their monthly pension allowance calculated under that section:

"(3) If a fireman dies and leaves surviving him both a widow who married the fireman prior to his retirement, and a child or children of the fireman under the age of 18 years, the board of trustees shall order paid to the widow of the fireman a monthly pension allowance equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under the provisions of Subdivision (1) of this subsection, and in addition the board of trustees shall order paid to the widow or other person having the care and custody of the child or children under the age of 18 years a monthly pension allowance for the use and benefit of the child or children equal to the amount provided for the widow. If the fireman leaves no children under the age of 18 years surviving him or if at any time after the death of the fireman no child is entitled to allowance, then the monthly pension allowance to be paid the widow shall be equal to the full amount the fireman would have been entitled to receive, if disabled, under Subdivision (1) of this subsection:

"(4) If the fireman dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance to be paid, for use and benefit of the child or children under the age of 18 years, to the person having the care and custody of the child or children shall be computed as follows: an amount equal to the full amount the fireman would have been entitled to receive, if disabled, under the provisions of Subdivision (1) of this subsection shall be paid for each of the fireman's children under the age of 18 years, except that the total monthly pension allowance provided for children shall not exceed the amount to which the fireman would have been entitled under Subdivision (1) of this subsection. If the fireman dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance shall be extended to a child or children on proof to the board of trustees that the child or children are unmarried, a full-time student and between the ages of 18 and 22; the monthly pension shall be extended only for the period of time the child remains a full-time student; the monthly pension allowance shall be paid directly to the child or children and shall be an amount equal to the full amount the fireman would have been entitled to receive, except that the total amount shall not exceed the amount to which the fireman would have been entitled under Subdivision (1) of this subsection:

"(5) If the fireman dies and only if no widow or child is entitled to an allowance under the provisions of this section, a monthly pension allowance equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under Subdivision (1) of this subsection shall be paid to each parent of the deceased fireman on proof to the board of trustees that the parent was dependent on the fireman immediately prior to the death of the fireman, except that the total monthly pension allowance provided for parents shall not exceed the full amount the fireman would have been entitled to receive:

"(e) Allowance or benefits payable under the provisions of this section for any minor child shall cease when that child becomes 18 years of age or marries. If a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a

result of a physical or mental illness, injury, or retardation; that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving the allowance so long as he remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he is over the maximum age at the time of the death of his parent and the child is totally disabled as a result of a physical or mental illness, injury, or retardation, the child is entitled to receive as an allowance that to which he would have been entitled had he been under the maximum age at the time of the death of his parent.]

“(c) [(d)] The provisions of this section are not applicable to a fireman or his beneficiaries if the fireman’s death or disability results from suicide or attempted suicide before the fireman has completed two years of service with the fire department for which he was employed.

“(e) The wife of a deceased fireman who had served actively for a period of 20 years or more in a regularly active fire department shall, insofar as the provisions of this section are concerned, be considered the fireman’s widow as long as she is not married; notwithstanding that she may have married and divorced or married after the fireman died and she became a widow. A widow covered under this section shall be limited to the pension allowance of the deceased member of this fund; to whom she was last married.]

“(d) [(f)] The monthly pension of beneficiaries of a deceased fireman whose pension benefits were subject to the adjustment under the provisions of Sections 4(c), 4(h), 4(i), or 4(j) [(4)(f) or 4(g)] of this Act shall be adjusted in the same manner.”

SECTION 17. Section 11, Chapter 432, Acts of the 64th Legislature, Regular Session, 1975, as amended (Article 6243e.2, Vernon’s Texas Civil Statutes), is amended to read as follows:

“Section 11. (a) If a member of a fire department who is eligible for benefits under this Act or who is receiving retirement benefits under this Act dies, his survivors, as described below, shall be entitled to a continuation of his benefits pursuant to this section and Section 7 of this Act. [has been retired on allowances because of length of service or disability dies from any cause whatsoever, or if while in service any member dies from any cause growing out of or in consequence of the performance of his duty and the member is participating in a fund, or dies from any cause whatsoever after he has become entitled to an allowance or pension certificate, and if] If the fireman leaves surviving a widow, a child or children under the age of 18 years, a child who is over the age of 18 who is totally disabled as a result of a physical or mental illness, injury, or retardation, or a dependent parent or parents, the board of trustees shall order paid a monthly pension allowance [which shall be based on the amount which the fireman would have been entitled to receive had he continued to live and be retired on allowance at the date of his death]. The allowance or allowances shall be calculated and paid as follows:

“(1) If a fireman dies and leaves surviving him both a widow who married the member prior to his retirement and a child or children of the member under the age of 18 years, the board of trustees shall order paid to the widow of the member a monthly pension allowance equal to one-half of the amount the member would have been entitled to receive, and in addition the board of trustees shall order paid to the widow or other person having care and custody of the child or children under the age of 18 years a monthly pension allowance, for the use and benefit of the child or children, equal to the amount provided for the widow. If the member leaves no child under the age of 18 years surviving him or if at any time after the death of the member no child is entitled to allowance, then the monthly pension allowance to be paid the widow shall be equal to the full amount the member would have been entitled to receive.

“(2)(A) If the member dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance to be paid, for the use and benefit of the child or children under the age of 18 years, to the person having the care and custody of the child or children shall be computed as follows: an amount equal to the full amount that the member would have been entitled to receive shall be paid for the member’s children under the age of 18 years, except that the total monthly pension allowance provided for children shall not exceed the amount which the member would have been entitled to receive.

“(B) If the fireman dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance shall be extended to a child or children on proof to the board of trustees that the child or children are unmarried, a full-time student and between the ages of 18 and 22; the monthly pension shall be extended only for the period of time the child remains a full-time student; the monthly pension allowance shall be paid directly to the child or children and shall be an amount equal to the full amount the fireman would have been entitled to receive, except that the total amount shall not exceed the amount to which the fireman would have been entitled under Subdivision (1) of this subsection.

“(3) If the member dies and only if no widow or child is entitled to an allowance under the provisions of this section, a monthly pension allowance equal to one-half of the amount that the member would have been entitled to receive shall be paid to each parent of the deceased member on proof to [of] the board of trustees that the parent was dependent on the member immediately prior to the death of the member, except that the total monthly pension allowance provided for the parents shall not exceed the full amount which the member would have been entitled to receive.

“(b) Allowance or benefits payable under the provisions of this section for any minor child shall cease when the child becomes 18 years of age or marries, except that if a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury, or retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving the allowance so long as he or she remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he or she is over the maximum age at the time of the death of his or her parent and the child is totally disabled as a result of a physical or mental illness, injury, or retardation, the child is entitled to receive as an allowance that to which he or she would have been entitled had he or she been under the maximum age at the time of the death of his parent.

“(c) The wife of a deceased fireman [~~who has been retired on disability allowances because of length of service or has been retired for disability after having served actively for a period of 20 years or more~~] shall, insofar as the provisions of this section are concerned, be considered the fireman’s widow as long as she is not married, notwithstanding that she may have married and divorced or married and became a widow after such fireman died. A widow covered under this section shall be limited to the pension allowance of the deceased member to whom she was last married.

“(d) *A fireman may designate a trustee for any beneficiary, other than his or her spouse, who may be eligible, pursuant to this Act, to receive an allowance or benefits. The fireman shall file a written designation with the Board of Trustees of the Firemen’s Relief and Retirement Fund stating his appointment of a trustee. Such designation shall include the name and the address of the trustee and the name of the eligible beneficiary or beneficiaries to whom he or she intends to appoint a trustee. The Board shall upon the death of the fireman pay any allowance or benefits to the designated trustee for the benefit of the stated beneficiary.*”

SECTION 18. Chapter 432, Acts of the 64th Legislature, Regular Session, 1975, as amended (Article 6243e.2, Vernon’s Texas Civil Statutes), is amended by adding a new Section 6A to read as follows:

“Section 6A. *The Board of Trustees of any firemen’s relief and retirement fund shall establish benefit eligibility for a full-time employee who has been employed for as long as six (6) years and thereafter becomes disabled or dies from heart or lung disease or cancer, based upon a presumption that such death or disease was a consequence of his duties as a fireman, if the fireman shall have successfully passed a physical examination prior to the claimed disability or death, or upon entering upon his employment as a fireman, and the examination failed to reveal any evidence of the condition or disease of the lungs, hypertension, cancer, or heart disease. Such benefit eligibility and such presumption shall be for the purposes only of such pension benefit to which such employee may be entitled under this Act.*”

SECTION 19. Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon’s Texas Civil Statutes), is amended by adding Section 30 to read as follows:

“Section 30. **INTERROGATION AND RIGHTS IN CERTAIN CITIES.** (a) *This section applies to a fire fighter or police officer who is employed by a city having a population of 1,500,000 or more according to the most recent federal census.*

“(b) *In this section:*

“(1) *‘Employee’ means a fire fighter or police officer employed by the city who holds a position that is classified under this Act and who has completed the probationary period specified in Section 12 of this Act.*

“(2) *‘Investigation’ means any administrative investigation conducted by the city of any alleged misconduct by an employee that could result in punitive action against that employee.*

“(3) *‘Investigator’ means any agent or employee of the city who is assigned to conduct an investigation.*

“(4) *‘Punitive action’ means a disciplinary suspension, indefinite suspension, demotion in rank, or any combination of those actions.*

“(c) *An investigator may interrogate an employee who is the subject of an investigation only during the employee’s normally assigned working hours unless:*

“(1) as determined by the employee’s department chief or the chief’s designee, the seriousness of the investigation requires interrogation at another time; and

“(2) the employee is compensated for the interrogation time on an overtime basis.

“(d) The department chief may not consider work time missed from regular duties by an employee due to participation in the conduct of an investigation in determining whether to impose a punitive action or in determining the severity of a punitive action.

“(e) Investigators may not interrogate an employee who is subject to an investigation at the employee’s home without the permission of the employee.

“(f) An employee who is subject to an investigation has the right to inquire and, on inquiry, to be informed of the identities of all investigators taking part in any interrogation of the employee.

“(g) Before an investigator may interrogate an employee who is subject to an investigation, the investigator must inform the employee in writing of the nature of the investigation and the names of the persons who have complained about the employee concerning the matters under investigation. An investigator may not conduct an interrogation of an employee based on a complaint by a person who is not a peace officer unless the person verifies the complaint in writing before a public officer who is authorized by law to take statements under oath. An investigator may interrogate an employee about events or conduct reported by a witness who is not a complainant without disclosing the name of the witness. As used in this subsection, ‘complainant’ means a person claiming to be the victim of police misconduct. This subsection does not prohibit an interrogation based on a complaint from an anonymous complainant if the departmental employee receiving the anonymous complaint certifies in writing, under oath, that the complaint was indeed anonymous. This subsection does not apply to on-the-scene investigations that occurred immediately after an incident being investigated if the limitations of this subsection would unreasonably hinder the essential purpose of the investigation or interrogation. If the limitation would hinder the investigation or interrogation, the employee under investigation must be furnished, as soon as practicable, a written statement of the nature of the investigation and the names of the complaining parties.

“(h) An interrogation session of an employee who is subject to an investigation may not be unreasonably long. In determining reasonableness, the gravity and complexity of the investigation must be considered. The investigators shall allow reasonable interruptions to permit the employee to attend to personal physical necessities.

“(i) Investigators may not threaten an employee who is subject to an investigation with punitive action during an interrogation. However, an investigator may inform an employee that failure to truthfully answer reasonable questions directly related to the investigation or to fully cooperate in the conduct of the investigation may result in punitive action.

“(j) If prior notification of intent to record an interrogation is given to the other party, either the investigators or the employee subject to an interrogation may record the interrogation.

“(k) If an investigation does not result in punitive action against an employee, but does result in a reprimand recorded in writing or an adverse finding or determination regarding the employee, the reprimand, finding, or determination may not be placed in a personnel file maintained on the employee unless the employee is first given an opportunity to read and sign the reprimand, finding, or determination. If the employee refuses to sign the reprimand, finding, or determination, it may be placed in the personnel file with a notation that the employee refused to sign it. An employee may respond in writing to any reprimand, finding, or determination that is placed in the employee’s personnel file under this subsection by submitting a written response to the department chief not later than the 10th day after the date on which the employee was asked to sign the document. The response shall be placed in the personnel file. An employee who receives a punitive action and who elects not to appeal the action may file a written response as prescribed by this subsection not later than the 10th day after the date on which the employee is given written notice of the punitive action from the department chief.

“(l) The governing body may, by ordinance, adopt the provisions of this section verbatim.”

SECTION 20. Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon’s Texas Civil Statutes), is amended by adding Section 30A to read as follows:

“Section 30A. In any city with a population of 1,500,000 or more according to the most recent federal census, Section 30 expires upon final enactment of an ordinance adopted by the governing body pursuant to Subsection (l) of Section 30. Provided, however, that the governing body may not amend nor repeal such ordinance prior to two years after the effective date of the ordinance.”

SECTION 21. Sections 2 and 14A, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon’s Texas Civil Statutes), are amended to read as follows:

“Section 2. DEFINITIONS. By the term ‘Fireman’ is meant any member of the Fire Department appointed to such position in substantial compliance with the provisions of Sections 9, 10 and 11 of this Act, or entitled to Civil Service Status under Section 24 of this Act. The term includes firemen who perform fire suppression, fire prevention, fire training, fire safety education, fire maintenance, fire communications, fire medical emergency technology, fire photography, or fire administration. By the term ‘Policeman’ is meant any member of the Police Department or other peace officer appointed to such position in substantial compliance with the provisions of Sections 9, 10 and 11 of this Act, or entitled to Civil Service Status under Section 14B or [Section] 24 of this Act. By the term ‘Commission’ as used herein is meant the Firemen’s and Policemen’s Civil Service Commission. The term ‘Director’ means Director of Firemen’s and Policemen’s Civil Service.”

“Section 14A. CROSSOVER PROMOTIONS. (a) In any city in this state having a population of 1,500,000 or more inhabitants, according to the last preceding federal census, all members of the police department, who shall be employed by such department with duties in a specialized technical area, to wit: (1) technical class, which includes but is not limited to criminal laboratory analysis and interpretations, and the technical criminal aspects of identification and photography, or (2) communications class, which includes but is not limited to the technical operations of police radio communications, shall be eligible for promotions within their respective classes. [In addition, all peace officers employed by the city, who shall be employed by such city department with duties in separate specialized police divisions, to wit: (1) park police class, which includes all sworn park police officers except those in ranks excluded from civil service status by this Act; or (2) airport police class, which includes all sworn airport police officers except those in ranks excluded from civil service status by this Act; or (3) city marshal class, which includes all sworn deputy city marshals except those in ranks excluded from civil service status by this Act; shall be eligible for promotions within their respective classes.]

“(b) In no event shall the members of the technical class, communications class, [~~park police class, airport police class, city marshal class,~~] or uniformed and detective class be eligible for promotion to a position outside of their respective class. This section shall be construed so as to preclude the lateral crossover by promotion by members of the technical or [;] communications class [; ~~park police, airport police, and city marshal classes~~] into the uniformed and detective class of the department; also to preclude the lateral crossover by promotion of members of the uniformed and detective class into the technical or [;] communications class [; ~~park police, airport police, and city marshal classes~~] of the department. In the event a member of one class desires to change classes, such may be accomplished upon qualification and only by entry into the new class at the lowest entry level of that class.

“(c) This section shall not operate so as to prevent the chief of police, assistant chiefs of police, and deputy chiefs of police, or their equivalent, by whatever name or title they may be called, from exercising the full sanctions, powers, duties, and authority of their respective offices in the supervision, management, and control over the uniformed and detective class, technical class, or communications class [; ~~park police class, airport police class, and city marshal class~~].

“(d) All provisions of this article regarding eligibility lists, examinations, appointments, and promotions shall apply to members of the technical class, communications class, and uniformed [~~park police class, airport police class, city marshal class, uniform class~~] and detective class. However, said provisions shall apply only to the appointment and promotion of a member of a particular class to a new position within such class.”

SECTION 22. Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon’s Texas Civil Statutes), is amended by adding Section 14B to read as follows:

“Section 14B. SPECIALIZED POLICE DIVISIONS. (a) In any city in this state having a population of 1,500,000 or more according to the most recent federal census, a peace officer employed by any city department in which the peace officer performs duties in a specialized police division, including but not limited to a person employed as a park police officer, airport police officer, or city marshal, is entitled to civil service status under this Act. The city council or legislative body of the city employing a peace officer in a specialized police division shall classify the officer in accordance with Section 8 of this Act and in accordance with the duties performed by the peace officer.

“(b) A peace officer who is employed in a specialized police division as provided by Subsection (a) of this section is eligible for promotion within the peace officer’s respective class. A member of a particular class is not eligible for promotion to a position outside that class, and lateral crossover by promotion by a member of one class to another class is prohibited. If a member of one class desires to change classes, the member must qualify and enter into the new class at the lowest entry level of

that class. The chief of police, assistant chiefs of police, and deputy chiefs of police, or their equivalent, by whatever name or title they may be called, may exercise the full sanctions, powers, duties, and authority of their respective offices in the supervision, management, and control of the members of those classes.

“(c) Each applicable provision of this Act, including the provisions relating to eligibility lists, examinations, promotions, appointments, educational incentive pay, longevity or seniority pay, certification pay, assignment pay, salary, vacation leave, and disciplinary appeals, applies to a peace officer employed by the city in a specialized police division as provided by this section.”

SECTION 23. This Act takes effect September 1, 1985.

SECTION 24. 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 the Senate on May 15, 1985, by the following vote: Yeas 31, Nays 0; May 24, 1985, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 25, 1985, House granted request of the Senate; May 27, 1985, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 23, 1985, by the following vote: Yeas 130, Nays 12, one present not voting; May 25, 1985, House granted request of the Senate for appointment of Conference Committee; May 27, 1985, House adopted Conference Committee Report by the following vote: Yeas 137, Nays 8, one present not voting.

Filed: June 16, 1985, without signature.

Effective: September 1, 1985