

CHAPTER 906

H.B. No. 1957

AN ACT

relating to fire fighters' and police officers' civil service in cities over 10,000 population.

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

SECTION 1. Subsection (i), Section 8A, Chapter 572, Acts of the 51st Legislature, Regular Session, 1949 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

(i) To be eligible for appointment to a position in the classification immediately below that of the police chief or head of the police department [~~in the police department~~], a person must be employed by the police department of that city as a sworn police officer with at least two years' continuous service in that department as a sworn police officer and must meet the requirements for appointment as the chief or head of a police department prescribed by Section 14D(7) of this Act. To be eligible for appointment to a position in the classification immediately below that of the fire chief or head of the fire department [~~in the fire department~~], a person must be employed by the fire department of that city with a permanent classification in at least an officer level and must meet the requirements for appointment as the chief or head of a fire department prescribed by Section 14D(7) of this Act.

SECTION 2. Subsection (d), Section 9, Chapter 572, Acts of the 51st Legislature, Regular Session, 1949 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) Appropriate physical examinations shall be required of all applicants for beginning or promotional positions. [~~and the~~] *Mental examinations may be required for beginning positions. The examinations shall be given by a physician, psychiatrist, or psychologist, as appropriate, appointed by the Commission and paid by such city; and in the event of rejection by such physician, psychiatrist, or psychologist, as appropriate, the applicant may call for further examination by a board of three (3) physicians, psychiatrists, or psychologists, as appropriate, 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.*

SECTION 3. Subsection (h), Section 9, Chapter 572, Acts of the 51st Legislature, Regular Session, 1949 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) When a question arises as to whether a fire fighter or police officer is sufficiently physically or mentally fit to continue his duties, the employee shall submit a report from his personal physician, psychiatrist, or psychologist, as appropriate, to the Commission.

If the Commission, the head of the Department, or the employee questions the report, the Commission shall appoint a physician, *psychiatrist, or psychologist, as appropriate*, 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, *psychiatrist's, or psychologist's, as appropriate*, report disagrees with the report of the employee's personal physician, *psychiatrist, or psychologist, as appropriate*, the Commission shall appoint a *three-member board composed of a physician, a psychiatrist, and a psychologist, or any combination thereof, as appropriate*, [~~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, *psychiatrist, or psychologist, as appropriate*, shall be paid by the employee. All other costs shall be paid by the city.

SECTION 4. Subsection C, Section 14, Chapter 572, Acts of the 51st Legislature, Regular Session, 1949 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

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 or police officer may, within ten (10) *calendar* 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.

SECTION 5. Subdivision (1)(a), Subsection D, Section 14, Chapter 572, Acts of the 51st Legislature, Regular Session, 1949 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Except as prescribed by Subdivision (6) of this subsection, all *eligible promotional candidates* [~~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 *eligible promotional candidates* [~~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) days before the date of the examination. Fire fighters or police officers 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 *eligible promotional candidates* [~~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 *eligible promotional candidates* [~~applicants~~] who wish to remain during the grading.

SECTION 6. Subdivision (4), Subsection D, Section 14, Chapter 572, Acts of the 51st Legislature, Regular Session, 1949 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

(4) Each *eligible promotional candidate* [~~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 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 *eligible promotional candidate* [~~an applicant~~] requests, the *eligible promotional candidate* [~~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.

SECTION 7. Subdivision (1), Subsection E, Section 14, Chapter 572, Acts of the 51st Legislature, Regular Session, 1949 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) Upon written request by the Heads of the Departments for a person to fill a vacancy in any classification, the *director* [~~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) *eligible promotional candidates* [~~applicants~~] passed the written promotional examination, the name or 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 *eligible promotional candidate* [~~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 *eligible promotional candidate* [~~officer~~] being bypassed.

SECTION 8. Subdivision (2), Subsection E, Section 14, Chapter 572, Acts of the 51st Legislature, Regular Session, 1949 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

(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 *from the date the written examination is given* unless exhausted, and at the expiration of one (1) year *from the date the written examination is given* they shall expire and new examinations may be given.

SECTION 9. Subsection (b), Section 16b, Chapter 572, Acts of the 51st Legislature, Regular Session, 1949 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) In a city having a population of less than 1,500,000 according to the most recent federal census, the chief or head of the fire department or police department may suspend an officer or employee under his supervision or jurisdiction for the violation of a civil service rule for a reasonable period not to exceed 15 calendar days, or for an indefinite period. An indefinite suspension is equivalent to permanent dismissal from the department. 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 or 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 chief or head of a department suspends a person, the chief or head shall, not later than the 120th hour after the hour of suspension, file a written statement with the commission giving the reasons for the suspension, and shall immediately furnish a copy of the statement to the suspended officer or employee. The chief or department head shall deliver the copy in person to the suspended officer or employee. The order of suspension shall inform the officer or employee that if he wishes to appeal, he must file a written appeal with the commission not later than the 10th day after the date on which the officer or employee receives a copy of the statement. 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. Unless the suspended officer or employee and the commission mutually agree to postpone the hearing for a definite period of time, the commission shall hold a hearing and render a decision in writing not later than the 30th day after the date on which it receives the notice of appeal. The decision of the commission shall state whether or not the suspended officer or employee is permanently dismissed, or temporarily suspended from the fire or

police department, or restored to his former position or status in the classified service in the department. 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 suspended officer or employee is restored to the position or class of service from which he was suspended, the officer or employee shall receive full compensation at the rate of pay provided for the position or class of service from which he was suspended for the actual time lost as a result of the suspension. All hearings of the commission in case of a suspension are public. The commission may deliberate the decision in closed session but may not consider evidence that was not presented at the hearing. The commission shall vote in open session. The written statement filed by the department head with the commission shall point out the civil service rule alleged to have been violated by the suspended officer or employee and shall contain the alleged acts of the officer or employee that the department head contends are in violation of the civil service rules. It is not sufficient for the department head merely to refer to the provisions of the rules alleged to have been violated. If the department head does not specifically point out the act or acts complained of on the part of the officer or employee, the commission shall promptly reinstate the officer or employee. In a civil service hearing conducted under this subsection, the department head is restricted to his original written statement and charges which may not be amended. In the original written statement and charges and in any hearing conducted under this subsection, the department head may not complain of an act or acts that occurred earlier than the 180th day immediately preceding the date on which the department head suspends the officer or employee. *If the act or acts are related to criminal activity including the violation of any federal, state, or local law carrying criminal penalties on the part of the officer or employee, the department head may not complain of an act or acts that were discovered earlier than the one hundred and eightieth (180th) day immediately preceding the date on which the department head suspends the officer or employee. The department head shall allege that the act or acts complained of were related to criminal activity.* An officer or employee may not be suspended or dismissed by the commission except for violation of the civil service rules, and after a finding by the commission of the truth of specific charges against the officer or employee.

SECTION 10. 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 18, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1957 on May 29, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 27, 1987, by a viva-voce vote.

Approved June 19, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.