

CHAPTER 311

S.B. No. 276

AN ACT

relating to the procedural and other rights of a fireman or policeman regarding an appeal of a department decision to the Fire Fighters' and Police Officers' Civil Service Commission.

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

SECTION 1. Section 17, Chapter 325, Acts of the 50th Legislature, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 17. PROCEDURE BEFORE COMMISSION. (a) In order for a Fireman or Policeman to appeal to the Commission from any action for which an appeal or review is provided under the terms of this Act, it shall only be necessary for him to file within ten (10) days with the Commission an appeal setting forth the basis of his appeal. *In any city having a population of 1.5 million or more according to the most recent federal census, in order for a Fireman or Policeman to appeal to the Commission from any action for which an appeal or review is provided under the terms of this Act, it shall only be necessary for him to file within fifteen (15) days with the Commission an appeal setting forth the basis of his appeal.* The appeal shall include a statement denying the truth of the charge as made, a statement taking exception to the legal sufficiency of such charges, a statement alleging that the recommended action does not fit the offense or alleged offense, or any combination of the statements, and in addition, a request for a hearing by the Commission.

(b) In all hearings, appeals, and reviews of every kind and character, wherein the Commission is performing an adjudicatory function, the employee shall have the right to be represented by counsel or any person of his choice. The employee may request the Commission to subpoena any books, records, documents, papers, accounts, or witnesses that the employee considers pertinent to his case. The request to have materials subpoenaed must be made at least ten (10) days before the date of the hearing. If the Commission does not subpoena the requested material, at least three (3) days prior to the hearing date, it shall make a written report to the employee stating the reason it will not subpoena the requested material, and this report shall be read into the public records of the Commission hearing.

(c) *In any city with a population of 1.5 million according to the most recent federal census, not later than the fifteenth (15th) day before the date on which the hearing will be held, the Commission shall notify the employee of the date on which the Commission will hold the hearing. The Commission may not restrict the ability of the employee to subpoena relevant witnesses. Not later than the third (3rd) day after the date on which the employee receives the Commission's written refusal to subpoena materials, the employee may request in writing that the Commission hold a hearing relating to the reasons for the employee's subpoena request. The hearing relating to the reason for the subpoena request shall be held on the original appeal hearing date. If the subpoena request is overruled, the Commission may hear the employee's appeal on that date, or if the Commission finds that the ends of justice would be served by a continuance, it shall reschedule the hearing to the next regularly scheduled meeting and shall give the employee fifteen (15) days' notice of that date. If the Commission sustains the employee's subpoena request, it shall reschedule the employee's appeal hearing to the next regularly scheduled meeting and shall give the employee fifteen (15) days' notice of that date. In an appeal from an indefinite suspension where the Commission rescheduled a hearing the Commission shall render a decision in writing within sixty (60) days after it receives the notice of appeal. If the Commission does not hold the hearing on the subpoena request as prescribed by this subsection, the Commission shall sustain the employee's appeal.*

(d) The witnesses may be placed under the rule. All such proceedings shall be public. The Commission shall consider only evidence submitted at the hearing. The Commission shall have the authority to issue subpoenas and subpoenas duces tecum for the attend-

ance of witnesses and for the production of documentary material. The Commission shall maintain a permanent public record of all proceedings with copies available at cost.

SECTION 2. Subsection (h), Section 29, 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:

(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 representative is entitled to be present to advise the member and is entitled to present any evidence or information for the member and shall not be prevented from fully participating in any of the proceedings.* 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.

(3) *Any of the parties may record any of the meetings or hearings during the grievance procedure.*

SECTION 3. 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on March 25, 1987, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendment on May 25, 1987, by a viva-voce vote.

Passed the House, with amendment, on May 22, 1987, by a non-record vote.

Approved June 11, 1987.

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