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Councilmember District C  
**FLOYD EMERY**  
Councilmember District D

## AGENDA ADDENDUM

Notice is hereby given of an addendum to the special meeting agenda of items coming before the City Council of Missouri City on **Monday, February 3, 2020, at 5:30 p.m. at: City Hall, Council Chamber, 2nd Floor, 1522 Texas Parkway, Missouri City, Texas, 77489**, for the purpose of considering the following agenda item. All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

**Item 2e of the agenda for the February 3, 2020 special City Council meeting is hereby added as follows:**

**2. DISCUSSION/POSSIBLE ACTION**

- (e) Presentation on Chapter 143 of the Texas Local Government Code, which provides for civil service (permanent employment) for fire fighters and police officers.

**Item 3. CLOSED EXECUTIVE SESSION of the agenda for the February 3, 2020 special City Council meeting is hereby added as follows:**

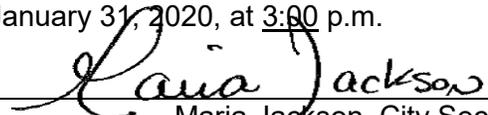
**3. CLOSED EXECUTIVE SESSION**

*The City Council may go into Executive Session regarding any item posted on the Agenda as authorized by Title 5, Chapter 551 of the Texas Government Code. Notice is hereby given that the City Council may go into Executive Session in accordance with the following provision of the Government Code:*

**Texas Government Code, Section 551.071** – Consultation with attorney to seek or receive legal advice regarding pending or contemplated litigation, a settlement offer, or on a matter in which the duty of the attorney to the City under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act: (iii) legal rights, duties, privileges and obligations arising out of the adoption of civil service status under Chapter 143, Texas Local Government Code and related legal matters.

### CERTIFICATION

I certify that a copy of the February 3, 2020, agenda addendum of items to be considered by the Missouri City City Council was posted on the City Hall bulletin board on January 31, 2020, at 3:00 p.m.

  
\_\_\_\_\_  
Maria Jackson, City Secretary

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the \_\_\_\_ day of \_\_\_\_\_, 2020.

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

**POLICE & FIRE CIVIL SERVICE LAW  
BACK TO THE BASICS**

**presented at the  
TXPELRA / TMHRA CONFERENCE**

**by**

**Ricardo J. Navarro**

**Attorney in Charge**

**Rio Grande Valley Office**

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The statutes contained herein were originally pulled from the Texas Legislature’s Official website, located at [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us), which represents the content as current through the 1st Called Session of the 85<sup>th</sup> Legislature, August 2017. Because the Texas Legislature makes ongoing changes to its laws, no specific warranty or guarantee can be made regarding the current accuracy of these contents at any given time. Therefore, specific provisions should also be cross-checked against the online content provided on the website to confirm whether any amendments have been implemented. -- RJN

# TEXAS LOCAL GOVERNMENT CODE

## CHAPTER 141. COMPENSATION AND EXPENSES OF MUNICIPAL OFFICERS AND EMPLOYEES.

### SUBCHAPTER A. COMPENSATION, EXPENSES, AND PAYROLL DEDUCTIONS.

**§141.001. Elected And Appointed Officers In Type A General-Law Municipalities.**

**§141.002. Appointed Officers In Type B General-Law Municipalities.**

**§141.003. Governing Body in Type C General-Law Municipalities.**

**§141.004. Officers in Home-Rule Municipalities.**

**§141.005. Elected Officers In Populous Municipalities.**

**§141.006. Police Officers In Type A General-Law Municipality.**

**§141.007. Police Reserve Force.**

**§141.008. Payroll Deductions in Certain Municipalities.**

**§141.009. Definitions.**

**§141.010. Municipal Employees In Type A And B General-Law Municipalities.**

### SUBCHAPTER B. COMPENSATION OF MEMBERS OF FIRE AND POLICE DEPARTMENTS IN CERTAIN MUNICIPALITIES.

**§141.031. Base Salary.**

(a) In a municipality with a population of 10,000 to 40,000, each member of the fire or police department is entitled to receive a salary of at least \$165 a month.

(b) In a municipality with a population of 40,001 to 100,000, each member of the fire or police department is entitled to receive a salary of at least \$195 a month.

(c) In a municipality with a population of 100,001 to 175,000, each member of the fire or police department is entitled to receive a salary of at least \$210 a month.

(d) In a municipality with a population of more than 175,000, each member of the fire or police department is entitled to receive a salary of at least \$220 a month.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 2001, 77th Leg., ch. 402, Sec. 10, eff. Sept. 1, 2001.*

**§141.032. Longevity Pay.**

In a municipality with a population of 10,000 or more, each member of the fire or police department is entitled to receive, in addition to all other money paid for services rendered in the department, longevity pay of \$4 a month for each year of service in the department, not to exceed 25 years.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

**§141.033. Classification of Positions; Salary Schedule.**

(a) Each municipality affected by this subchapter shall classify all positions in its fire and police departments and shall specify the duties and prescribe the salary for each classification.

(b) A member of the fire or police department who is required to perform the duties of a particular classification is entitled to be paid the salary prescribed for that position during the time the member performs those duties.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

**§141.034. Petition to Increase Salaries.**

**§141.035. Penalty.**

(a) A person who is a municipal official in a municipality with a population of 10,000 or more and who is in charge of the fire or police department or is responsible for setting the compensation provided by this subchapter commits an offense if the person violates this subchapter.

(b) An offense under this section is punishable by a fine of not less than \$10 or more than \$100.

(c) Each day on which the municipal official causes or permits a violation of this subchapter to occur is a separate offense.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

**CHAPTER 142. ASSISTANCE, BENEFITS, AND  
WORKING CONDITIONS OF MUNICIPAL OFFICERS  
AND EMPLOYEES.**

**SUBCHAPTER A. GENERAL PROVISIONS.**

**§142.001. General Provisions Relating To Hours of Labor and Vacation of Members of Fire and Police Departments in Municipalities.**

**§142.0013. Hours Of Labor And Vacation Of Members Of Fire And Police Departments In Certain Municipalities.**

**§142.0015. Hours Of Labor And Vacation Of Members Of Fire And Police Departments In Municipality With Population Of More Than 10,000.**

(a) This section applies only in a municipality with a population of more than 10,000.

(b) A fire fighter or a member of a fire department who provides emergency medical services, other than the fire chief or the assistant chief or an equivalent classification, and who is required or permitted to work more than the number of hours that bears the same ratio to 212 hours as the number of days in the work period bears to 28 days is considered to have worked overtime. The person is entitled to be compensated for the overtime as provided by Subsection (e).

(c) A member of a fire department who does not fight fires or provide emergency medical services, including a mechanic, clerk, investigator, inspector, fire marshal, fire alarm dispatcher, and maintenance worker, other than the fire chief or the assistant chief or an equivalent classification, and who is required or permitted to average more hours in a week than the number of hours in a normal work week of the majority of the employees of the municipality other than fire fighters, emergency medical service personnel, and police officers, is considered to have worked overtime. The person is entitled to be compensated for the overtime as provided by Subsection (e).

(d) In computing the hours worked in a work week or the average number of hours worked in a work week during a work cycle of a fire fighter or other member of a fire department covered by this section, all hours are counted during which the fire fighter or other member of a fire department is required

to remain on call on the employer's premises or so close to the employer's premises that the person cannot use those hours effectively for that person's own purposes. Hours in which the fire fighter or other member of a fire department is required only to leave a telephone number at which that person may be reached or to remain accessible by radio or pager are not counted. In computing the hours in a work week or the average number of hours in a work week during a work cycle of a fire fighter or a member of a fire department who provides emergency medical services, vacation, sick time, holidays, time in lieu of holidays, or compensatory time may be excluded as hours worked.

(e) A fire fighter or other member of a fire department may be required or permitted to work overtime. A fire fighter or other member of a fire department, other than the fire chief or the assistant chief or an equivalent classification, who is required or permitted to work overtime as provided by Subsections (b) and (c) is entitled to be paid overtime for the excess hours worked without regard to the number of hours worked in any one week of the work cycle. Overtime hours are paid at a rate equal to 1-1/2 times the compensation paid to the fire fighter or member of the fire department for regular hours.

(e-1) Notwithstanding Subsection (d), in a municipality with a population of one million or more that has not adopted Chapter 143, for purposes of determining hours worked, including determining hours worked for calculation of overtime under Subsection (e), all hours are counted as hours worked during which the fire fighter or member of the fire department:

(1) is required to remain available for immediate call to duty by continuously remaining in contact with the fire department office by telephone, pager, or radio; or

(2) is taking any authorized leave, including attendance incentive leave, vacation leave, holiday leave, compensatory time off, jury duty, military leave, or leave because of a death in the family.

(f) Except as provided by Subsection (g) or (j), a police officer may not be required to work:

(1) more than 40 hours during a calendar week in a municipality that:

(A) has a population of more than one million;

(B) is not subject to Section 142.0017; and

(C) has not adopted Chapter 174; or

(2) in a municipality not described by Subdivision (1), more hours during a calendar week than the number of hours in the normal work week of the majority of the employees of the municipality other than fire fighters and police officers.

(f-1) In determining whether a police officer is considered to have been required to work overtime for purposes of Subsection (f)(1), all hours are counted during which the police officer:

(1) is required to remain available for immediate call to duty by continuously remaining in contact with a police department office by telephone or by radio;

(2) is taking any authorized leave, including attendance incentive leave, vacation leave, holiday leave, compensatory time off, jury duty, military leave, or leave because of a death in the family; and

(3) is considered to have worked under Subsection (h).

(g) In the event of an emergency, a police officer may be required to work more hours than permitted by Subsection (f). An emergency is an unexpected happening or event or an unforeseen situation or crisis that calls for immediate action and requires the chief or head of the police department to order a police officer to work overtime.

(h) An officer required to work overtime in an emergency is entitled to be compensated for the overtime at a rate equal to 1-1/2 times the compensation paid to the officer for regular hours unless the

officer elects, with the approval of the governing body of the municipality, to accept compensatory time equal to 1-1/2 times the number of overtime hours. For purposes of this subsection, compensable hours of work include all hours during which a police officer is:

(1) on duty on the premises of the municipality or at a prescribed workplace or required or permitted to work for the municipality, including preshift and postshift activities that are:

(A) an integral part of the officer's principal activity; or

(B) closely related to the performance of the principal activity; and

(2) away from the premises of the municipality under conditions that are so circumscribed that the officer is restricted from effectively using the time for personal pursuits.

(i) Bona fide meal periods are not counted as hours worked. For a bona fide meal period, which does not include coffee breaks or time for snacks, a police officer must be completely relieved from duty. Ordinarily, 30 minutes or more is long enough for a bona fide meal period. A period shorter than 30 minutes may be long enough for a bona fide meal period under special conditions. A police officer is not relieved from duty if the officer is required to perform any duties, whether active or inactive, during the meal period.

(j) If a majority of police officers working for a municipality sign a written waiver of the prohibition in Subsection (f), the municipality may adopt a work schedule for police officers requiring a police officer to work more hours than permitted by Subsection (f). The officer is entitled to overtime pay if the officer works more hours during a calendar month than the number of hours in the normal work month of the majority of the employees of the municipality other than fire fighters and police officers.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 24(a), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 756, Sec. 1, eff. Sept. 1, 1993; Acts 2007, 80th Leg., R.S., Ch. 80, Sec. 1, eff. May 14, 2007; Acts 2007, 80th Leg., R.S., Ch. 229, Sec. 1, eff. September 1, 2007; Acts 2009, 81st Leg., R.S., Ch. 1269, Sec. 1, eff. June 19, 2009.

#### **§142.0016. Use of Compensatory Time by Members of Fire and Police Departments in Municipality with Population of More Than 10,000.**

(a) This section applies only in a municipality with a population of less than 1.5 million that is eligible to adopt civil service under Chapter 143.

(b) A fire fighter or police officer may, with the approval of the governing body of the municipality, accept instead of overtime pay compensatory time at a rate equal to 1-1/2 times the number of overtime hours.

(c) A fire fighter or police officer may use compensatory time only when both the fire fighter or police officer and the municipality agree the time may be used.

(d) A municipality may at any time pay a fire fighter or police officer for all or part of the person's accumulated compensatory time if both the fire fighter or police officer and the municipality agree the time may be paid.

(e) If full payment for a fire fighter's or police officer's accumulated compensatory time would exceed 10 percent of the person's annual salary, the municipality may at its option defer payment of the amount in excess of 10 percent until the first pay period of the next fiscal year.

(f) A municipality shall pay for accumulated compensatory time at a rate equal to the fire fighter's or police officer's salary at the time the payment is made or at the time the payment was requested, whichever is greater.

(g) If a fire fighter or police officer dies or terminates employment for any reason, the municipality shall pay to the fire fighter or police officer or to his estate the total value of all the fire fighter's or police officer's accumulated compensatory time.

*Added by Acts 1989, 71st Leg., ch. 37, Sec. 1, eff. Sept. 1, 1989.*

**§142.0017. Hours Of Labor And Vacation Of Members Of Fire And Police Departments In Municipality With Population Of More Than 1.5 Million.**

**§142.002. Two Platoon Fire System And Hours Of Labor In Certain Municipalities.**

**§142.003. Hospital And Medical Assistance For Police Reserve Force.**

**§142.004. Payment Of Hospitalization Costs For Peace Officers And Fire Fighters.**

**§142.005. Liability Insurance For Fire And Police Department Officers And Employees Driving Emergency Vehicles.**

**§142.006. Motor Vehicle Liability Insurance for Peace Officers And Fire Fighters.**

**§142.007. Motor Vehicle Liability Insurance For Fire And Police Department Officers And Employees In Municipality Of 1,550,000 Or More.**

**§142.008. Salary Continuation Payments; Subrogation.**

**§142.009. Payment For Appearances Of Fire Fighters And Police Officers In Court Or Administrative Proceedings.<sup>1</sup>**

**§142.010. Definitions.**

**§142.011. Educational Leave.**

**§142.012. Overtime Compensation for Certain Police Department Officers and Civilian Employees.**

**§142.013. Business Leave Time Account For Police Officers In Certain Municipalities.**

**SUBCHAPTER B. LOCAL CONTROL OF POLICE OFFICER EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES.**

**§142.051. Applicability.**

**§142.052. Definitions.**

**§142.053. Petition For Recognition: Election Or Action By Governing Body.**

**§ 142.054. Certification Election.**

**§142.055. Election to Authorize Operating Under This Subchapter.**

**§142.056. Change Or Modification Of Recognition.**

**§142.057. Strikes Prohibited.**

**§142.058. Recognition Of Police Officers Association.**

**§142.059. General Provisions Relating To Agreements.**

**§142.060. Selection of Bargaining Agent; Bargaining Unit.**

**§142.061. Protected Rights Of Police Officer.**

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<sup>1</sup> Tex. Att’y Gen. Op. No. GA-0612 (2008) (Employers are not required to pay employees’ appearance as witness in a civil service hearing before a hearing examiner because an administrative hearing is not a court proceeding) (Note: the 81<sup>st</sup> legislature amended the statute to include administrative hearings, and make the statute applicable to administrative proceedings).

- §142.062. Open Records.
- §142.063. Open Deliberations.
- §142.064. Ratification And Enforceability Of Agreement.
- §142.065. Action or Election To Repeal Authorization To Operate Under This Subchapter.
- §142.066. Election To Repeal Agreement.
- §142.067. Agreement Supersedes Conflicting Provisions.
- §142.068. Effect on Existing Benefits And Rights.

### **SUBCHAPTER C. LOCAL CONTROL OF FIREFIGHTER EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES.**

- §142.101. Applicability.
- §142.102. Definitions.
- §142.103. Petition For Recognition: Election Or Action By Governing Body.
- §142.104. Certification Election.
- §142.105. Election To Authorize Operating Under This Subchapter.
- §142.106. Change Or Modification Of Recognition.
- §142.107. Strikes Prohibited.
- §142.108. Recognition Of Firefighters Association.
- §142.109. General Provisions Relating To Agreements.
- §142.110. Selection of Bargaining Agent; Bargaining Unit.
- §142.111. Protected Rights Of Firefighter.
- §142.112. Open Records.
- §142.113. Open Deliberations.
- §142.114. Ratification and Enforceability Of Agreement.
- §142.115. Action or Election to Repeal Authorization To Operate Under This Subchapter.
- §142.116. Election to Repeal Agreement.
- §142.117. Agreement Supersedes Conflicting Provisions.
- §142.118. Preemption Of Other Law.
- §142.119. Effect On Existing Benefits.

### **SUBCHAPTER D. LOCAL CONTROL OF EMERGENCY MEDICAL SERVICES PERSONNEL EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES.**

- §142.151. Applicability.
- §142.152. Definitions.
- §142.153. General Provisions Relating To Agreements.
- §142.154. Strikes Prohibited.
- §142.155. Recognition of Emergency Medical Services Personnel Association.

**§142.156. Election.**

**§142.1565. Election to Authorize Operating Under This Subchapter.**

**§142.157. Selection of Bargaining Agents.**

**§142.158. Open Records Required.**

**§142.159. Ratification and Enforceability of Agreement.**

**§142.160. Agreement Supersedes Conflicting Provisions.**

**§142.1605. Action or Election to Repeal Authorization To Operate Under This Subchapter.**

**§142.161. Repeal of Agreement By Electorate.**

**§142.162. Protected Rights Of Individual Employees.**

**§ 142.163. Binding Interest Arbitration.**

## **CHAPTER 143. MUNICIPAL CIVIL SERVICE FOR FIREFIGHTERS AND POLICE OFFICERS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

**§143.001. Purpose.**

(a) The purpose of this chapter is to secure efficient fire and police departments composed of capable personnel who are free from political influence and who have permanent employment tenure as public servants.

(b) The members of the Fire Fighters' and Police Officers' Civil Service Commission shall administer this chapter in accordance with this purpose.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

**§143.002. Municipalities Covered By Chapter.**

(a) This chapter applies only to a municipality:

(1) that:

(A) has a population of 10,000 or more;

(B) has a paid fire department or police department; and

(C) has voted to adopt this chapter or the law codified by this chapter; or

(2) whose election to adopt this chapter and whose acts subsequent to that election were validated by the law enacted by House Bill 822, Acts of the 73rd Legislature, Regular Session, 1993.

(b) Population under Subsection (a)(1) is determined by the most recent:

(1) federal decennial census; or

(2) annual population estimate provided by the state demographer under Chapter 468, Government Code, if that estimate is more recent than the most recent federal decennial census.

(c) If this chapter applies to a municipality as provided by Subsection (a), the application of this chapter to the municipality is not affected if the municipality's population changes and the municipality no longer meets the population requirement of Subsection (a)(1).

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 576, Sec. 1, eff. Aug. 30, 1993; Acts 2005, 79th Leg., Ch. [212](#), Sec. 1, eff. May 27, 2005; Acts 2005, 79th Leg., Ch. [1163](#), Sec. 1, eff. June 18, 2005.*

**§143.003. Definitions.**

In this chapter:

- (1) "Commission" means the Fire Fighters' and Police Officers' Civil Service Commission.
- (2) "Department head" means the chief or head of a fire or police department or that person's equivalent, regardless of the name or title used.
- (3) "Director" means the director of fire fighters' and police officers' civil service.
- (4) "Fire fighter" means a member of a fire department who was appointed in substantial compliance with this chapter or who is entitled to civil service status under Section 143.005 or 143.084. The term:

(A) applies only to an employee of a fire department whose position requires substantial knowledge of firefighting and who has met the requirements for certification by the Texas Commission on Fire Protection under Chapter 419, Government Code, including an employee who performs:

- (i) fire suppression;
- (ii) fire prevention;
- (iii) fire training;
- (iv) fire safety education;
- (v) fire maintenance;
- (vi) fire communications;
- (vii) fire medical emergency technology;
- (viii) fire photography;
- (ix) fire administration; or
- (x) fire arson investigation; and

(B) does not apply to a secretary, clerk, budget analyst, custodial engineer, or other administrative employee.

- (5) "Police officer" means a member of a police department or other peace officer who was appointed in substantial compliance with this chapter or who is entitled to civil service status under Section 143.005, 143.084, or 143.103.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 498, Sec. 1, eff. Sept. 1, 2001; Acts 2005, 79th Leg., Ch. [738](#), Sec. 1, eff. September 1, 2005.*

**§143.004. Election To Adopt Or Repeal Chapter.**

**§143.005. Status of Employees If Chapter Adopted.**

**§143.0051. Status of Employees in Certain Fire Departments.**

**§143.0051. Status Of Employees In Certain Fire Departments.**

**§143.0052. Fee For Emergency Medical Services.**

**§143.006. Implementation: Commission.**

(a) On adoption of this chapter, the Fire Fighters' and Police Officers' Civil Service Commission is established in the municipality. The chief executive of the municipality shall appoint the members of the commission within 60 days after the date this chapter is adopted. Within 30 days after the date the

municipality's first full fiscal year begins after the date of the adoption election, the governing body of the municipality shall implement this chapter.

(b) The commission consists of three members appointed by the municipality's chief executive and confirmed by the governing body of the municipality. Members serve staggered three-year terms with the term of one member expiring each year. If a vacancy occurs or if an appointee fails to qualify within 10 days after the date of appointment, the chief executive shall appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment.

(c) A person appointed to the commission must:

- (1) be of good moral character;
- (2) be a United States citizen;
- (3) be a resident of the municipality who has resided in the municipality for more than three years;
- (4) be over 25 years of age; and
- (5) not have held a public office within the preceding three years.

(c-1) Notwithstanding Subsection (c)(5), the municipality's chief executive may reappoint a commission member to consecutive terms. A commission member may not be reappointed to more than a third consecutive term unless the member's reappointment to a fourth or subsequent consecutive term is confirmed by a two-thirds majority of all the members of the municipality's governing body.

(c-2) Subsection (c)(5) does not prohibit the municipality's chief executive from appointing a former commission member to the commission if the only public office held by the former member within the preceding three years is membership on:

- (1) the commission; or
- (2) the commission and the municipality's civil service board for employees other than police officers and firefighters through a joint appointment to the commission and board.

(c-3) Subsections (c-1) and (c-2) do not apply to a municipality with a population of 1.5 million or more.

(d) In making initial appointments, the chief executive shall designate one member to serve a one-year term, one member to serve a two-year term, and one member to serve a three-year term. If a municipality has a civil service commission immediately before this chapter takes effect in that municipality, that civil service commission shall continue as the commission established by this section and shall administer the civil service system as prescribed by this chapter. As the terms of the members of the previously existing commission expire, the chief executive shall appoint members as prescribed by this section. If necessary to create staggered terms as prescribed by this section, the chief executive shall appoint the initial members, required to be appointed under this chapter, to serve terms of less than three years.

(e) Initial members shall elect a chairman and a vice-chairman within 10 days after the date all members have qualified. Each January, the members shall elect a chairman and a vice-chairman.

(f) The governing body of the municipality shall provide to the commission adequate and suitable office space in which to conduct business.

(g) The chief executive of a municipality commits an offense if the chief executive knowingly or intentionally fails to appoint the initial members of the commission within the 60-day period prescribed by Subsection (a). An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 or more than \$200. Each day after the 60-day period that the chief executive knowingly or intentionally fails to make a required appointment constitutes a separate offense.

(h) The chief executive of a municipality or a municipal official commits an offense if the person knowingly or intentionally refuses to implement this chapter or attempts to obstruct the enforcement of this chapter. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 or more than \$200.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Acts 2005, 79th Leg., Ch. 475, Sec. 1, eff. June 17, 2005.*

#### **§143.007. Removal Of Commission Member.**

(a) If at a meeting held for that purpose the governing body of the municipality finds that a commission member is guilty of misconduct in office, the governing body may remove the member. The member may request that the meeting be held as an open hearing in accordance with Chapter 551, Government Code.

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

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

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.*

#### **§143.008. Adoption and Publication Of Rules.**

(a) A commission shall adopt rules necessary for the proper conduct of commission business.

(b) The commission may not adopt a rule permitting the appointment or employment of a person who is:

- (1) without good moral character;
- (2) physically or mentally unfit; or
- (3) incompetent to discharge the duties of the appointment or employment.

(c) The commission shall adopt rules that prescribe cause for removal or suspension of a fire fighter or police officer. The rules must comply with the grounds for removal prescribed by Section 143.051.

(d) The commission shall publish each rule it adopts and each classification and seniority list for the fire and police departments. The rules and lists shall be made available on demand. A rule is considered to be adopted and sufficiently published if the commission adopts the rule by majority vote and causes the rule to be written, typewritten, or printed. Publication in a newspaper is not required and the governing body of the municipality is not required to act on the rule.

(e) A rule is not valid and binding on the commission until the commission:

- (1) mails a copy of the rule to the commissioner, if the municipality has an elected commissioner, and to department heads of the fire and police departments;
- (2) posts a copy of the rule for a seven-day period at a conspicuous place in the central fire and police stations; and
- (3) mails a copy of the rule to each branch fire station.

(f) The director shall keep copies of all rules for free distribution to members of the fire and police departments who request copies and for inspection by any interested person.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

**§143.009. Commission Investigations and Inspections.**

a) The commission or a commission member designated by the commission may investigate and report on all matters relating to the enforcement and effect of this chapter and any rules adopted under this chapter and shall determine if the chapter and rules are being obeyed.

(b) During an investigation, the commission or the commission member may:

(1) administer oaths;

(2) issue subpoenas to compel the attendance of witnesses and the production of books, papers, documents, and accounts relating to the investigation; and

(3) cause the deposition of witnesses residing inside or outside the state.

(c) A deposition taken in connection with an investigation under this section must be taken in the manner prescribed by law for taking a similar deposition in a civil action in federal district court.

(d) An oath administered or a subpoena issued under this section has the same force and effect as an oath administered by a magistrate in the magistrate's judicial capacity.

(e) A person who fails to respond to a subpoena issued under this section commits an offense punishable as prescribed by Section 143.016.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

**§143.010. Commission Appeal Procedure.**

(a) Except as otherwise provided by this chapter, if a fire fighter or police officer wants to appeal to the commission from an action for which an appeal or review is provided by this chapter, the fire fighter or police officer need only file an appeal with the commission within 10 days<sup>2</sup> after the date the action occurred.<sup>3</sup>

(b) The appeal must include the basis for the appeal and a request for a commission hearing. The appeal must also contain a statement denying the truth of the charge as made, a statement taking exception to the legal sufficiency of the charge, a statement alleging that the recommended action does not fit the offense or alleged offense, or a combination of these statements.<sup>4</sup>

(c) In each hearing, appeal, or review of any kind in which the commission performs an adjudicatory function, the affected fire fighter or police officer is entitled to be represented by counsel or a person the fire fighter or police officer chooses. Each commission proceeding shall be held in public.

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<sup>2</sup> *City of Lubbock v. Elkins*, 896 S.W.2d 346, 351 (Tex. App.--Amarillo 1995)(calculation of “days” refers to each full 24 hour period after service or receipt of an appealable action under §143.010, TLGC)

<sup>3</sup> *Jackson v. City of Texas City*, 265 S.W.3d 640 (Tex. App.— Houston [1st Dist.] 2008, no pet.)(employer dismissal of employees for failure to meet conditions of employment does not constitute basis for employees’ appeal with the CSC or hearing examiner).

<sup>4</sup> *City of Temple Firemen’s and Policemen’s Civil Serv. Comm’n v. Bender*, 787 S.W.2d 951 (Tex. 1990) (the statutory language of the commission appeal procedure is unambiguous and mandatory. Employee’s lack of adherence to its provisions constitutes basis for dismissal of appeal).

(d) The commission may issue subpoenas and subpoenas duces tecum for the attendance of witnesses and for the production of documentary material.

(e) The affected fire fighter or police officer may request the commission to subpoena any books, records, documents, papers, accounts, or witnesses that the fire fighter or police officer considers pertinent to the case. The fire fighter or police officer must make the request before the 10th day before the date the commission hearing will be held. If the commission does not subpoena the material, the commission shall, before the third day before the date the hearing will be held, make a written report to the fire fighter or police officer stating the reason it will not subpoena the requested material. This report shall be read into the public record of the commission hearing.

(f) Witnesses may be placed under the rule at the commission hearing.

(g) The commission shall conduct the hearing fairly and impartially as prescribed by this chapter and shall render a just and fair decision. The commission may consider only the evidence submitted at the hearing.

(h) The commission shall maintain a public record of each proceeding with copies available at cost.

(i) In addition to the requirements prescribed by this section, an appeal to the commission in a municipality with a population of 1.5 million or more must meet the requirements prescribed by Section 143.1015.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1989, 71st Leg., ch. 1, Sec. 25(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1248, Sec. 48, eff. Sept. 1, 1989.*

#### **§143.011. Decisions and Records.**

(a) Each concurring commission member shall sign a decision issued by the commission.

(b) The commission shall keep records of each hearing or case that comes before the commission.

(c) Each rule, opinion, directive, decision, or order issued by the commission must be written and constitutes a public record that the commission shall retain on file.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

#### **§143.012. Director.**

(a) On adoption of this chapter, the office of Director of Fire Fighters' and Police Officers' Civil Service is established in the municipality. The commission shall appoint the director. The director shall serve as secretary to the commission and perform work incidental to the civil service system as required by the commission. The commission may remove the director at any time.

(b) A person appointed as director must meet each requirement for appointment to the commission prescribed by Section 143.006(c), except that in a municipality with a population of less than 1.5 million, the person is not required to meet the local residency requirement.

(c) A person appointed as director may be a commission member, a municipal employee, or some other person.

(d) The municipality's governing body shall determine the salary, if any, to be paid to the director.

(e) If, immediately before this chapter takes effect in a municipality, the municipality has a duly and legally constituted director of civil service, regardless of title, that director shall continue in office as the director established by this section and shall administer the civil service system as prescribed by this chapter.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1999, 76th Leg., ch. 355, Sec. 1, eff. Sept. 1, 1999.*

**§143.013. Appointment and Removal Of Department Head.**

(a) Unless elected, each department head is:

- (1) appointed by the municipality's chief executive and confirmed by the municipality's governing body; or
- (2) in a municipality having an elected fire or police commissioner, appointed by the fire or police commissioner in whose department the vacancy exists and confirmed by the municipality's governing body.

(b) A person appointed as head of a fire department must be eligible for certification by the Commission on Fire Protection Personnel Standards and Education at the intermediate level or its equivalent as determined by that commission and must have served as a fully paid fire fighter for at least five years. A person appointed as head of a police department must be eligible for certification by the Commission on Law Enforcement Officer Standards and Education at the intermediate level or its equivalent as determined by that commission and must have served as a bona fide law enforcement officer for at least five years.

(c) Except as provided by Subsection (d), if a person is removed from the position of department head, the person shall be reinstated in the department and placed in a position with a rank not lower than that held by the person immediately before appointment as department head. The person retains all rights of seniority in the department.

(d) If a person serving as department head is charged with an offense in violation of civil service rules and is dismissed from the civil service or discharged from his position as department head, the person has the same rights and privileges of a hearing before the commission and in the same manner and under the same conditions as a classified employee. If the commission finds that the charges are untrue or unfounded, the person shall immediately be restored to the same classification that the person held before appointment as department head. The person has all the rights and privileges of the prior position according to seniority and shall be paid his full salary for the time of suspension.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

**§143.014. Appointment and Removal Of Person Classified Immediately Below Department Head.**

**§143.015. Appeal of Commission Decision to District Court.**

(a) If a fire fighter or police officer is dissatisfied with any commission decision, the fire fighter or police officer may file a petition in district court asking that the decision be set aside. The petition must be filed within 10 days after the date the final commission decision:

- (1) is sent to the fire fighter or police officer by certified mail; or
- (2) is personally received by the fire fighter or police officer or by that person's designee.

(b) An appeal under this section is by trial de novo. The district court may grant the appropriate legal or equitable relief necessary to carry out the purposes of this chapter. The relief may include reinstatement or promotion with back pay if an order of suspension, dismissal, or demotion is set aside.

(c) The court may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party.<sup>5</sup>

(d) If the court finds for the fire fighter or police officer, the court shall order the municipality to pay lost wages to the fire fighter or police officer.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

#### **§143.016. Penalty for Violation of Chapter.**

(a) A fire fighter or police officer commits an offense if the person violates this chapter.

(b) An offense under this section or Section 143.009 is a misdemeanor punishable by a fine of not less than \$10 or more than \$100, confinement in the county jail for not more than 30 days, or both fine and confinement.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

### **SUBCHAPTER B. CLASSIFICATION AND APPOINTMENT**

#### **§143.021. Classification; Examination Requirement.**

(a) The commission shall provide for the classification of all fire fighters and police officers. The municipality's governing body shall establish the classifications by ordinance. The governing body by ordinance shall prescribe the number of positions in each classification.

(b) Except for the department head and a person the department head appoints in accordance with Section 143.014 or 143.102, each fire fighter and police officer is classified as prescribed by this subchapter and has civil service protection. The failure of the governing body to establish a position by ordinance does not result in the loss of civil service benefits by a person entitled to civil service protection or appointed to the position in substantial compliance with this chapter.

(c) Except as provided by Sections 143.013, 143.014, 143.0251, 143.102, and 143.1251, an existing position or classification or a position or classification created in the future either by name or by increase in salary may be filled only from an eligibility list that results from an examination held in accordance with this chapter.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1995, 74th Leg., ch. 64, Sec. 1, eff. Sept. 1, 1995.*

#### **§143.022. Physical Requirements and Examinations.**

(a) The commission shall set the age and physical requirements for applicants for beginning and promotional positions in accordance with this chapter. The requirements must be the same for all applicants.

(b) The commission shall require each applicant for a beginning or a promotional position to take an appropriate physical examination. The commission may require each applicant for a beginning position to take a mental examination. The examination shall be administered by a physician, psychiatrist, or psychologist, as appropriate, appointed by the commission. The municipality shall pay for each examination.

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<sup>5</sup> *Steubing v. City of Killeen*, 298 S.W.3d 673 (Tex. App. — Austin 2009, no pet.) (trial court has discretion to order a remand to hearing examiner and deny to prevailing party reimbursement of attorney's fees).

(c) If an applicant is rejected by the physician, psychiatrist, or psychologist, as appropriate, the applicant may request another examination by a board of three physicians, psychiatrists, or psychologists, as appropriate, appointed by the commission. The applicant must pay for the board examination. The board's decision is final.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(b), eff. Aug. 28, 1989.*

#### **§143.023. Eligibility for Beginning Position.**

(a) A person may not take an entrance examination for a beginning position in the police department unless the person is at least 18 years of age. A person may not take an entrance examination for a beginning position in the fire department unless the person is at least 18 years of age but not 36 years of age or older.

(b) A person may not be certified as eligible for a beginning position in a fire department if the person is 36 years of age or older.

(c) A person who is 45 years of age or older may not be certified for a beginning position in a police department.

(d) An applicant may not be certified as eligible for a beginning position with a fire department unless the applicant meets all legal requirements necessary to become eligible for future certification by the Commission on Fire Protection Personnel Standards and Education.

(e) An applicant may not be certified as eligible for a beginning position with a police department unless the applicant meets all legal requirements necessary to become eligible for future licensing by the Commission on Law Enforcement Officer Standards and Education.

(f) Each police officer and fire fighter affected by this chapter must be able to read and write English.

(g) In addition to meeting the requirements prescribed by this section, an applicant for a beginning position in a police department in a municipality with a population of 1.5 million or more must meet the requirements prescribed by Section 143.105.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Acts 2005, 79th Leg., Ch. [380](#), Sec. 1, eff. June 17, 2005; Acts 2009, 81st Leg., R.S., Ch. [273](#), Sec. 1, eff. May 30, 2009.*

#### **§143.024. Entrance Examination Notice.**

(a) Before the 10th day before the date an entrance examination is held, the commission shall cause a notice of the examination to be posted in plain view on a bulletin board located in the main lobby of the city hall and in the commission's office. The notice must show the position to be filled or for which the examination is to be held, and the date, time, and place of the examination.

(b) The notice required by Subsection (a) must also state the period during which the eligibility list created as a result of the examination will be effective.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

#### **§143.025. Entrance Examinations.**

(a) The commission shall provide for open, competitive, and free entrance examinations to provide eligibility lists for beginning positions in the fire and police departments. The examinations are open to each person who makes a proper application and meets the requirements prescribed by this chapter.

(b) An eligibility list for a beginning position in the fire or police department may be created only as a result of a competitive examination held in the presence of each applicant for the position, except as provided by Subsections (d) and (e). The examination must be based on the person's general knowledge

and aptitude and must inquire into the applicant's general education and mental ability. A person may not be appointed to the fire or police department except as a result of the examination.

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

(d) Examinations for beginning positions in the fire department may be held at different locations if each applicant takes the same examination and is examined in the presence of other applicants.

(e) This subsection applies only in a municipality to which Subchapter J does not apply. An examination for beginning positions in the police department must be held at one or more locations in the municipality in which the police department is located and may be held at additional locations outside the municipality. An examination held at multiple locations must be administered on the same day and at the same time at each location at which it is given. Only one eligibility list for a police department may be created from that examination, and only one eligibility list may be in effect at a given time. Each applicant who takes the examination for the eligibility list shall:

- (1) take the same examination; and
- (2) be examined in the presence of other applicants for that eligibility list.

(f) An additional five points shall be added to the examination grade of an applicant who served in the United States armed forces, received an honorable discharge, and made a passing grade on the examination.

(g) An applicant may not take the examination for a particular eligibility list more than once.

(h) The commission shall keep each eligibility list for a beginning position in effect for a period of not less than six months or more than 12 months, unless the names of all applicants on the list have been referred to the appropriate department. The commission shall determine the length of the period. The commission shall give new examinations at times the commission considers necessary to provide required staffing for scheduled fire or police training academies.

(i) The grade to be placed on the eligibility list for each applicant shall be computed by adding an applicant's points under Subsection (f), if any, to the applicant's grade on the written examination. Each applicant's grade on the written examination is based on a maximum grade of 100 percent and is determined entirely by the correctness of the applicant's answers to the questions. The minimum passing grade on the examination is 70 percent. An applicant must pass the examination to be placed on an eligibility list.

(j) Notwithstanding Subsection (i), each applicant who is either a natural-born or adopted child of a fire fighter who previously suffered a line-of-duty death while covered by this chapter shall be ranked at the top of any eligibility list in which said applicant receives a minimum passing grade on that respective eligibility exam. The deceased fire fighter's applicant child must otherwise satisfy all of the requirements for eligibility for a beginning position in a fire department contained in this chapter. This commission shall promulgate rules to identify and verify each applicant's eligibility for applicability of this subsection.

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

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1989, 71st Leg., ch. 756, Sec. 1, 2, eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 628, Sec. 1, eff. Sept. 1, 2003; Acts 2005, 79th Leg., Ch. [380](#), Sec. 2, eff. June 17, 2005; Acts 2007, 80th Leg., R.S., Ch. [27](#), Sec. 1, eff. September 1, 2007.*

#### **§143.0251. Reappointment After Resignation.**

The commission may adopt rules to allow a police officer who voluntarily resigns from the department to be reappointed to the department without taking another departmental entrance examination.

*Added by Acts 1995, 74th Leg., ch. 64, Sec. 2, eff. Sept. 1, 1995.*

**§143.026. Procedure for Filling Beginning Positions.**

(a) When a vacancy occurs in a beginning position in a fire or police department, the department head shall request in writing from the commission the names of suitable persons from the eligibility list. The director shall certify to the municipality's chief executive the names of the three persons having the highest grades on the eligibility list.

(b) From the three names certified, the chief executive shall appoint the person having the highest grade unless there is a valid reason why the person having the second or third highest grade should be appointed.<sup>6</sup>

(c) If the chief executive does not appoint the person having the highest grade, the chief executive shall clearly set forth in writing the good and sufficient reason why the person having the highest grade was not appointed.

(d) The reason required by Subsection (c) shall be filed with the commission and a copy provided to the person having the highest grade. If the chief executive appoints the person having the third highest grade, a copy of the report shall also be furnished to the person having the second highest grade.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

**§143.027. Probationary Period.**

(a) A person appointed to a beginning position in the fire or police department must serve a probationary period of one year beginning on that person's date of employment as a fire fighter, police officer, or academy trainee. In a municipality with a population of less than 1.9 million, the commission by rule may extend the probationary period by not more than six months for a person who:

- (1) is not employed by a department in which a collective bargaining agreement or a meet-and-confer agreement currently exists or previously existed; and
- (2) is required to attend a basic training academy for initial certification by the Texas Commission on Fire Protection or the Commission on Law Enforcement Officer Standards and Education.

(b) During a fire fighter's or police officer's probationary period, the department head shall discharge the person and remove the person from the payroll if the person's appointment was not regular or was not made in accordance with this chapter or the commission rules.

(c) During a fire fighter's or police officer's probationary period, the person may not be prohibited from joining or required to join an employee organization. Joining or not joining an employee organization is not a ground for retaining or not retaining a fire fighter or police officer serving a probationary period.

(d) A fire fighter or police officer who was appointed in substantial compliance with this chapter and who serves the entire probationary period automatically becomes a full-fledged civil service employee and has full civil service protection.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Acts 2005, 79th Leg., Ch. [869](#), Sec. 2, eff. September 1, 2005; Acts 2005, 79th Leg., Ch. [909](#), Sec. 1, eff. September 1, 2005; Acts 2007, 80th Leg., R.S., Ch. [921](#), Sec. 11.001, eff. September 1, 2007.*

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<sup>6</sup> *City of Beaumont v. Spivey*, 1 S.W.3d 385 (Tex. App.—Beaumont 1999, no pet.) (city may void ab initio an appointment to an officer vacant position when the candidate is not under compliance with Chapter 143 and the appointment is not based on competitive examination.).

### **§143.028. Eligibility For Promotion.**

(a) Except as provided by Sections 143.013 and 143.102, a fire fighter is not eligible for promotion unless the person has served in that fire department in the next lower position or other positions specified by the commission for at least two years at any time before the date the promotional examination is held. A fire fighter is not eligible for promotion to the rank of captain or its equivalent unless the person has at least four years' actual service in that fire department.

(b) Except as provided by Sections 143.013 and 143.102, a police officer is not eligible for promotion unless the person has served in that police department in the next lower position or other positions specified by the commission for at least two years immediately before the date the promotional examination is held. A police officer is not eligible for promotion to the rank of captain or its equivalent unless the person has at least four years' actual service in that police department.

(c) If a person is recalled on active military duty for not more than 60 months, the two-year service requirements prescribed by Subsections (a) and (b) do not apply and the person is entitled to have time spent on active military duty considered as duty in the respective fire or police department.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Acts 2005, 79th Leg., Ch. 833, Sec. 2, eff. June 17, 2005.*

### **§143.029. Promotional Examination Notice.**

(a) Before the 90th day before the date a promotional examination is held, the commission shall post a notice that lists the sources from which the examination questions will be taken.

(b) Before the 30th day before the date a promotional examination is held, the commission shall post a notice of the examination in plain view on a bulletin board located in the main lobby of the city hall and in the commission's office. The notice must show the position to be filled or for which the examination is to be held, and the date, time, and place of the examination. The commission shall also furnish sufficient copies of the notice for posting in the stations or subdepartments in which the position will be filled.

(c) The notice required by Subsection (b) may also include the name of each source used for the examination, the number of questions taken from each source, and the chapter used in each source.

(d) In addition to the notice prescribed by this section, a municipality with a population of 1.5 million or more must post the notice prescribed by Section 143.107.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

### **§143.030. Eligibility for Fire Department Promotional Examination.**

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) Each promotional examination is open to each fire fighter who at any time has continuously held for at least two years a position in the classification that is immediately below, in salary, the classification for which the examination is to be held.

(c) If the department has adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, each promotional examination is open to each fire fighter who has continuously held for at least two years a position at the next lower pay grade, if it exists, in the classification for which the examination is to be held.

(d) If there are not enough fire fighters in the next lower position with two years' service in that position to provide an adequate number of persons to take the examination, the commission may open the examination to persons in that position with less than two years' service. If there is still an insufficient number, the commission may open the examination to persons with at least two years' experience in the second lower position, in salary, to the position for which the examination is to be held.

(e) If a fire fighter had previously terminated the fire fighter's employment with the department and is subsequently reemployed by the same department, the fire fighter must again meet the two-year service requirement for eligibility to take a promotional examination. In determining if a fire fighter has met the two-year service requirement, a fire department may not consider service in another fire department.

(f) This section does not prohibit lateral crossover between classes.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

#### **§143.031. Eligibility For Police Department Promotional Examination.**

(a) Each promotional examination is open to each police officer who for at least two years immediately before the examination date has continuously held a position in the classification that is immediately below, in salary, the classification for which the examination is to be held.

(b) If the department has adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, each promotional examination is open to each police officer who has continuously held for at least two years immediately before the examination date a position at the next lower pay grade, if it exists, in the classification for which the examination is to be held.

(c) If there are not sufficient police officers in the next lower position with two years' service in that position to provide an adequate number of persons to take the examination, the commission shall open the examination to persons in that position with less than two years' service. If there is still an insufficient number, the commission may open the examination to persons in the second lower position, in salary, to the position for which the examination is to be held.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

#### **§143.032. Promotional Examination Procedure.**

(a) The commission shall adopt rules governing promotions and shall hold promotional examinations to provide eligibility lists for each classification in the fire and police departments.<sup>7</sup> Unless a different procedure is adopted under an alternate promotional system as provided by Section 143.035, the examinations shall be held substantially as prescribed by this section.

(b)(1) Each eligible promotional candidate shall be given an identical examination in the presence of the other eligible promotional candidates, except that an eligible promotional candidate who is serving on active military duty outside of this state or in a location that is not within reasonable geographic proximity to the location where the examination is being administered is entitled to take the examination outside of the presence of and at a different time than the other candidates and may be allowed to take an examination that is not identical to the examination administered to the other candidates.

(b)(2) The commission may adopt rules under Subsection (a) providing for the efficient administration of promotional examinations to eligible promotional candidates who are members of the armed forces serving on active military duty. In adopting the rules, the commission shall ensure that the administration of the examination will not result in unnecessary interference with any ongoing military effort. The rules shall require that:

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<sup>7</sup> *Klinger v. San Angelo*, 902 S.W.2d 669 (Tex. App. – Austin, 1995) (CSC has rule-making authority to determine minimum number of text takers for competitive exam; delay in securing a certified list for promotional purposes under these circumstances does not create any right to backpay).

(A) at the discretion of the administering entity, an examination that is not identical to the examination administered to other eligible promotional candidates may be administered to an eligible promotional candidate who is serving on active military duty; and

(B) if a candidate serving on active military duty takes a promotional examination outside the presence of other candidates and passes the examination, the candidate's name shall be included in the eligibility list of names of promotional candidates who took and passed the examination nearest in time to the time at which the candidate on active military duty took the examination.

(c) The examination must be entirely in writing and may not in any part consist of an oral interview.

(d) The examination questions must test the knowledge of the eligible promotional candidates about information and facts and must be based on:

(1) the duties of the position for which the examination is held;

(2) material that is of reasonably current publication and that has been made reasonably available to each member of the fire or police department involved in the examination; and

(3) any study course given by the departmental schools of instruction.

(e) The examination questions must be taken from the sources posted as prescribed by Section 143.029(a). Fire fighters or police officers may suggest source materials for the examinations.

(f) The examination questions must be prepared and composed so that the grading of the examination can be promptly completed immediately after the examination is over.

(g) The director is responsible for the preparation and security of each promotional examination. The fairness of the competitive promotional examination is the responsibility of the commission, the director, and each municipal employee involved in the preparation or administration of the examination.

(h) A person commits an offense if the person knowingly or intentionally:

(1) reveals a part of a promotional examination to an unauthorized person; or

(2) receives from an authorized or unauthorized person a part of a promotional examination for unfair personal gain or advantage.

(i) An offense under Subsection (h) is a misdemeanor punishable by a fine of not less than \$1,000, confinement in the county jail for not more than one year, or both the fine and the confinement.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(c), eff. Aug. 28, 1989; Acts 2005, 79th Leg., Ch. [833](#), Sec. 1, eff. June 17, 2005.*

### **§143.033. Promotional Examination Grades.**

(a) The grading of each promotional examination shall begin when one eligible promotional candidate completes the examination. As the eligible promotional candidates finish the examination, the examinations shall be graded at the examination location and in the presence of any candidate who wants to remain during the grading.

(b) Each police officer is entitled to receive one point for each year of seniority as a classified police officer in that department, with a maximum of 10 points. Each fire fighter is entitled to receive one point for each year of seniority in that department, with a maximum of 10 points.

(c) Unless a different procedure is adopted under an alternate promotional system as provided by Section 143.035, the grade that must be placed on the eligibility list for each police officer or fire fighter shall be computed by adding the applicant's points for seniority to the applicant's grade on the written examination, but for a fire fighter applicant only if the applicant scores a passing grade on the written examination. Each applicant's grade on the written examination is based on a maximum grade of 100 points

and is determined entirely by the correctness of the applicant's answers to the questions. The passing grade in a municipality with a population of 1.5 million or more is prescribed by Section 143.108. In a municipality with a population of less than 1.5 million, all police officer applicants who receive a grade of at least 70 points shall be determined to have passed the examination and all fire fighter applicants who receive a grade on the written examination of at least 70 points shall be determined to have passed the examination. If a tie score occurs, the commission shall determine a method to break the tie.

(d) Within 24 hours after a promotional examination is held, the commission shall post the individual raw test scores on a bulletin board located in the main lobby of the city hall.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(d), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1991; Acts 2005, 79th Leg., Ch. [869](#), Sec. 3, eff. September 1, 2005.*

#### **§143.034. Review And Appeal Of Promotional Examination.**

(a) On request, each eligible promotional candidate from the fire or police department is entitled to examine the person's promotional examination and answers, the examination grading, and the source material for the examination. If dissatisfied, the candidate may appeal, within five business days, to the commission for review in accordance with this chapter. In computing this period, a Saturday, Sunday, or legal holiday is not considered a business day.

(b) The eligible promotional candidate may not remove the examination or copy a question used in the examination.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(e), eff. Aug. 28, 1989.*

#### **§143.035. Alternate Promotional System In Police Department.**

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

(b) On the recommendation of the head of the police department and a majority vote of the sworn police officers in the department, the commission may adopt an alternate promotional system to select persons to occupy nonentry level positions other than positions that are filled by appointment by the department head. The promotional system must comply with the requirements prescribed by this section.

(c) The commission shall order the director to conduct an election and to submit the revised promotional system either to all sworn police officers within the rank immediately below the classification for which the promotional examination is to be administered or to all sworn police officers in the department.

(d) The director shall hold the election on or after the 30th day after the date notice of the election is posted at the department. The election shall be conducted throughout each regular work shift at an accessible location within the department during a 24-hour period.

(e) The ballot shall contain the specific amendment to the promotional procedure. Each sworn police officer shall be given the opportunity to vote by secret ballot "for" or "against" the amendment.

(f) The revised promotional system must be approved by a majority vote of the sworn police officers voting. A defeated promotional system amendment may not be placed on a ballot for a vote by the sworn police officers for at least 12 months after the date the prior election was held, but this provision does not apply if the head of the department recommends a different proposal to the commission.

(g) The commission shall canvass the votes within 30 days after the date the election is held. An appeal alleging election irregularity must be filed with the commission within five working days after the date the election closes. If approved by the sworn police officers, the promotional system amendment

becomes effective after all election disputes have been ruled on and the election votes have been canvassed by the commission.

(h) At any time after an alternate promotional system has been adopted under this section and has been in effect for at least 180 days, the department head may petition the commission to terminate the alternate system, and the commission shall terminate the alternate system.

(i) At any time after an alternate promotional system has been adopted under this section and has been in effect for at least 180 days, a petition signed by at least 35 percent of the sworn police officers may be submitted to the commission asking that the alternate promotional system be reconsidered. If a petition is submitted, the commission shall, within 60 days after the date the petition is filed, hold an election as prescribed by this section. If a majority of those voting vote to terminate, the commission shall terminate the alternate promotional system.

(j) If the alternate system is terminated, an additional list may not be created under the alternate system.

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

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1993, 73rd Leg., ch. 1018, Sec. 1, eff. Aug. 30, 1993.*

#### **§143.036. Procedure For Making Promotional Appointments.**

(a) When a vacancy occurs in a nonentry position that is not appointed by the department head as provided by Sections 143.014 and 143.102, the vacancy shall be filled as prescribed by this section and Section 143.108, as applicable. A vacancy in a fire fighter position described by this subsection occurs on the date the position is vacated by:

- (1) resignation;
- (2) retirement;
- (3) death;
- (4) promotion; or
- (5) issuance of an indefinite suspension in accordance with Section 143.052(b).

(b) If an eligibility list for the position to be filled exists on the date the vacancy occurs, the director, on request by the department head, shall certify to the department head the names of the three persons having the highest grades on that eligibility list. The commission shall certify the names within 10 days after the date the commission is notified of the vacancy. If fewer than three names remain on the eligibility list or if only one or two eligible promotional candidates passed the promotional examination, each name on the list must be submitted to the department head.

(c) In a municipality with a population of less than 1.5 million, the commission shall submit names from an existing eligibility list to the department head until the vacancy is filled or the list is exhausted.

(d) If an eligibility list does not exist on the date a vacancy occurs or a new position is created, the commission shall hold an examination to create a new eligibility list within 90 days after the date the vacancy occurs or a new position is created.

(e) If an eligibility list exists on the date a vacancy occurs, the department head shall fill the vacancy by permanent appointment from the eligibility list furnished by the commission within 60 days after the date the vacancy occurs. If an eligibility list does not exist, the department head shall fill the

vacancy by permanent appointment from an eligibility list that the commission shall provide within 90 days after the date the vacancy occurs. This subsection does not apply in a municipality with a population of 1.5 million or more.

(f) Unless the department head has a valid reason for not appointing the person, the department head shall appoint the eligible promotional candidate having the highest grade on the eligibility list. If the department head has a valid reason for not appointing the eligible promotional candidate having the highest grade, the department head shall personally discuss the reason with the person being bypassed before appointing another person. The department head shall also file the reason in writing with the commission and shall provide the person with a copy of the written notice. On application of the bypassed eligible promotional candidate, the reason the department head did not appoint that person is subject to review by the commission or, on the written request of the person being bypassed, by an independent third party hearing examiner under Section 143.057.<sup>8</sup>

(g) If a person is bypassed, the person's name is returned to its place on the eligibility list and shall be resubmitted to the department head if a vacancy occurs. If the department head refuses three times to appoint a person, files the reasons for the refusals in writing with the commission, and the commission does not set aside the refusals, the person's name shall be removed from the eligibility list.

(h) Each promotional eligibility list remains in existence for one year after the date on which the written examination is given, unless exhausted. At the expiration of the one-year period, the eligibility list expires and a new examination may be held.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(f), eff. Aug. 28, 1989; Acts 2005, 79th Leg., Ch. 869, Sec. 4, eff. September 1, 2005.*

#### **§143.037. Record of Certification And Appointment.**

(a) When a person is certified and appointed to a position in the fire or police department, the director shall forward the appointed person's record to the proper department head. The director shall also forward a copy of the record to the chief executive and shall retain a copy in the civil service files.

(b) The record must contain:

- (1) the date notice of examination for the position was posted;
- (2) the date on which the appointed person took the examination;
- (3) the name of each person who conducted the examination;
- (4) the relative position of the appointed person on the eligibility list;
- (5) the date the appointed person took the physical examination, the name of the examining physician, and whether the person was accepted or rejected;
- (6) the date the request to fill the vacancy was made;
- (7) the date the appointed person was notified to report for duty; and
- (8) the date the appointed person's pay is to start.

(c) If the director intentionally fails to comply with this section, the commission shall immediately remove the director from office.

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<sup>8</sup> See *City of Round Rock v Whiteaker*, 241 S.W.3d 609 (Tex. App. – Austin 2007, \_\_\_ ) for discussion of bypass privileges afforded by statute to department head. Generally, the top-ranked candidate on a certified list has a “primary right” to the promotion within the time period sets by statute. 241 S.W.3d at 617.

(d) The director's failure to comply with this section does not affect the civil service status of an employee.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

#### **§143.038. Temporary Duties In Higher Classification.**

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) The department head may designate a person from the next lower classification to temporarily fill a position in a higher classification. The designated person is entitled to the base salary of the higher position plus the person's own longevity or seniority pay, educational incentive pay, and certification pay during the time the person performs the duties.

(c) The temporary performance of the duties of a higher position by a person who has not been promoted as prescribed by this chapter may not be construed as a promotion.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

### **SUBCHAPTER C. COMPENSATION**

#### **§143.041. Salary.**

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) Except as provided by Section 143.038, all fire fighters or police officers in the same classification are entitled to the same base salary.

(c) In addition to the base salary, each fire fighter or police officer is entitled to each of the following types of pay, if applicable:

- (1) longevity or seniority pay;
- (2) educational incentive pay as authorized by Section 143.044;
- (3) assignment pay as authorized by Sections 143.042 and 143.043;
- (4) certification pay as authorized by Section 143.044;
- (5) shift differential pay as authorized by Section 143.047; and
- (6) fitness incentive pay as authorized by Section 143.044.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1172, Sec. 1, eff. Aug. 28, 1989; Acts 2005, 79th Leg., Ch. 552, Sec. 1, eff. September 1, 2005.*

#### **§143.042. Assignment Pay.**

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) The governing body of a municipality may authorize assignment pay for fire fighters and police officers who perform specialized functions in their respective departments.

(c) The assignment pay is in an amount and is payable under conditions set by ordinance and is in addition to the regular pay received by members of the fire or police department.

(d) If the ordinance applies equally to each person who meets the criteria established by the ordinance, the ordinance may provide for payment to each fire fighter and police officer who meets training or education criteria for an assignment or the ordinance may set criteria that provide for payment only to a fire fighter or police officer in a special assignment.

(e) The head of the fire or police department is not eligible for the assignment pay authorized by this section.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

**§143.043. Field Training Officer Assignment Pay.**

(a) In this section, "field training officer" means a member of the police department who is assigned to and performs the duties and responsibilities of the field training officers program.

(b) The governing body of a municipality may authorize assignment pay for field training officers. The assignment pay is in an amount and is payable under conditions set by ordinance and is in addition to the regular pay received by members of the police department.

(c) The department head is not eligible for the assignment pay authorized by this section.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

**§143.044. Certification, Educational Incentive, and Fitness Incentive Pay.**

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) If each fire fighter or police officer in a municipality is afforded an opportunity to qualify for certification, the municipality's governing body may authorize certification pay to those fire fighters who meet the requirements for certification set by the Commission on Fire Protection Personnel Standards and Education or for those police officers who meet the requirements for certification set by the Commission on Law Enforcement Officer Standards and Education.

(c) If the criteria for educational incentive pay are clearly established, are in writing, and are applied equally to each fire fighter or police officer in a municipality who meets the criteria, the municipality's governing body may authorize educational incentive pay for each fire fighter or police officer who has successfully completed courses at an accredited college or university.

(d) If the criteria for fitness incentive pay are clearly established, are in writing, and are applied equally to each fire fighter or police officer in a municipality who meets the criteria, the municipality's governing body may authorize fitness incentive pay for each fire fighter or police officer who successfully meets the criteria.

(e) The certification pay, educational incentive pay, and fitness incentive pay are in addition to a fire fighter's or police officer's regular pay.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Acts 2005, 79th Leg., Ch. 552, Sec. 2, eff. September 1, 2005; Acts 2005, 79th Leg., Ch. 552, Sec. 3, eff. September 1, 2005.*

**§143.045. Accumulation and Payment Of Sick Leave.**

(a) A permanent or temporary fire fighter or police officer is allowed sick leave with pay accumulated at the rate of 1-1/4 full working days for each full month employed in a calendar year, so as to total 15 working days to a person's credit each 12 months.

(b) A fire fighter or police officer may accumulate sick leave without limit and may use the leave if unable to work because of a bona fide illness. If an ill fire fighter or police officer exhausts the sick leave and can conclusively prove that the illness was incurred in the performance of duties, an extension of sick leave shall be granted.

(c) Except as otherwise provided by Section 143.116, a fire fighter or police officer who leaves the classified service for any reason is entitled to receive in a lump-sum payment the full amount of the person's salary for accumulated sick leave if the person has accumulated not more than 90 days of sick leave. If a fire fighter or police officer has accumulated more than 90 working days of sick leave, the person's employer may limit payment to the amount that the person would have received if the person had been allowed to use 90 days of accumulated sick leave during the last six months of employment. The lump-sum payment is computed by compensating the fire fighter or police officer for the accumulated time

at the highest permanent pay classification for which the person was eligible during the last six months of employment. The fire fighter or police officer is paid for the same period for which the person would have been paid if the person had taken the sick leave but does not include additional holidays and any sick leave or vacation time that the person might have accrued during the 90 days.

(d) To facilitate the settlement of the accounts of deceased fire fighters and police officers, all unpaid compensation, including all accumulated sick leave, due at the time of death to an active fire fighter or police officer who dies as a result of a line-of-duty injury or illness, shall be paid to the persons in the first applicable category of the following prioritized list:

- (1) to the beneficiary or beneficiaries the fire fighter or police officer designated in writing to receive the compensation and filed with the commission before the person's death;
- (2) to the fire fighter's or police officer's widow or widower;
- (3) to the fire fighter's or police officer's child or children and to the descendants of a deceased child, by representation;
- (4) to the fire fighter's or police officer's parents or to their survivors; or
- (5) to the properly appointed legal representative of the fire fighter's or police officer's estate, or in the absence of a representative, to the person determined to be entitled to the payment under the state law of descent and distribution.

(e) Payment of compensation to a person in accordance with Subsection (d) is a bar to recovery by another person.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

#### **§143.046. Vacations.**

(a) Each fire fighter or police officer is entitled to earn a minimum of 15 working days' vacation leave with pay in each year.<sup>9</sup>

(b) In computing the length of time a fire fighter or police officer may be absent from work on vacation leave, only those calendar days during which the person would be required to work if not on vacation may be counted as vacation days.

(c) Unless approved by the municipality's governing body, a fire fighter or police officer may not accumulate vacation leave from year to year.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

#### **§143.047. Shift Differential Pay.**

(a) The governing body of a municipality may authorize shift differential pay for fire fighters and police officers who work a shift in which more than 50 percent of the time worked is after 6 p.m. and before 6 a.m.

(b) The shift differential pay is in an amount and is payable under conditions set by ordinance and is in addition to the regular pay received by members of the fire or police department.

*Added by Acts 1989, 71st Leg., ch. 1172, Sec. 3, eff. Aug. 28, 1989.*

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<sup>9</sup> *Cooke v City of Alice*, 333 S.W.3d 318, 323-24 (Tex. App. – San Antonio 2010, no pet.)( city's rules implementing statutes governing vacation and sick leave accrual that defined the term “day” did not violate Chap. 143 so long as the definition was applied uniformly within each civil service department) See also utilization of “day” in relevant provisions of Chap. 142, TLGC.

## **SUBCHAPTER D. DISCIPLINARY ACTIONS**

### **§143.051. Cause for Removal Or Suspension. 10**

A commission rule prescribing cause for removal or suspension of a fire fighter or police officer is not valid unless it involves one or more of the following grounds:

- (1) conviction of a felony or other crime involving moral turpitude;
- (2) violations of a municipal charter provision;
- (3) acts of incompetency;
- (4) neglect of duty;
- (5) discourtesy to the public or to a fellow employee while the fire fighter or police officer is in the line of duty;
- (6) acts showing lack of good moral character;
- (7) drinking intoxicants while on duty or intoxication while off duty;
- (8) conduct prejudicial to good order;
- (9) refusal or neglect to pay just debts;
- (10) absence without leave;
- (11) shirking duty or cowardice at fires, if applicable; or
- (12) violation of an applicable fire or police department rule or special order.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

### **§143.052. Disciplinary Suspensions.**

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) The head of the fire or police department may suspend a fire fighter or police officer under the department head's supervision or jurisdiction for the violation of a civil service rule. The suspension may be for a reasonable period not to exceed 15 calendar days or for an indefinite period. An indefinite suspension is equivalent to dismissal from the department.

(c) If the department head suspends a fire fighter or police officer, the department head shall, within 120 hours after the hour of suspension, file a written statement with the commission giving the reasons for the suspension. The department head shall immediately deliver a copy of the statement in person to the suspended fire fighter or police officer.<sup>11</sup>

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<sup>10</sup> *Jackson v. City of Texas City*, 265 S.W.3d 640 (Tex. App.— Houston [1st Dist.] 2008, no pet.) (employees' dismissal was based on non-disciplinary action despite employees' argument that it was under 143.051(12)).

<sup>11</sup> *City of Houston v. Tones*, 299 S.W.3d 235 (Tex. App.— Houston. [14th Dist.] 2009, no pet.) (allegations of statutory misinterpretation do not constitute judicial error) (warning: hearing examiner may use argument on error regarding mechanics on timing of service against the city).

(d) The copy of the written statement must inform the suspended fire fighter or police officer that if the person wants to appeal to the commission, the person must file a written appeal with the commission within 10 days after the date the person receives the copy of the statement.<sup>12</sup>

(e) The written statement filed by the department head with the commission must point out each civil service rule alleged to have been violated by the suspended fire fighter or police officer and must describe the alleged acts of the person 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.

(f) If the department head does not specifically point out in the written statement the act or acts of the fire fighter or police officer that allegedly violated the civil service rules, the commission shall promptly reinstate the person.

(g) If offered by the department head, the fire fighter or police officer may agree in writing to voluntarily accept, with no right of appeal, a suspension of 16 to 90 calendar days for the violation of a civil service rule. The fire fighter or police officer must accept the offer within five working days after the date the offer is made. If the person refuses the offer and wants to appeal to the commission, the person must file a written appeal with the commission within 15 days after the date the person receives the copy of the written statement of suspension.

(h) In the original written statement and charges and in any hearing conducted under this chapter, the department head may not complain of an act that occurred earlier than the 180th day preceding the date the department head suspends the fire fighter or police officer. If the act is allegedly related to criminal activity including the violation of a federal, state, or local law for which the fire fighter or police officer is subject to a criminal penalty, the department head may not complain of an act that is discovered earlier than the 180th day preceding the date the department head suspends the fire fighter or police officer. The department head must allege that the act complained of is related to criminal activity.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(g), eff. Aug. 28, 1989.*

### **§143.053. Appeal of Disciplinary Suspension.**

(a) This section does not apply to a municipality with a population of 1.5 million or more.<sup>13</sup>

(b) If a suspended fire fighter or police officer appeals the suspension to the commission, the commission shall hold a hearing and render a decision in writing within 30 days after the date it receives notice of appeal. The suspended person and the commission may agree to postpone the hearing for a definite period.

(c) In a hearing conducted under this section, the department head is restricted to the department head's original written statement and charges, which may not be amended.<sup>14</sup>

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<sup>12</sup> *City of Desoto v. White*, 288 S.W.3d 389 (Tex. 2009) (omission of pre-appeal notice to employee is not jurisdictional and does not preclude hearing examiner of authority to hear appeal) (court should analyze harms to appealing employee and decided on appropriate appeal remedy).

<sup>13</sup> *City of Houston v. Clark*, 197 S.W.3d 314 (Tex. 2005) (Fire Fighter and Police Officer Civil Service Act authorizes municipalities to appeal adverse decisions of independent hearing examiners regarding disciplinary actions against fire fighters and police officers).

<sup>14</sup> *See Gish v Austin*, \_\_\_ S.W.3rd \_\_\_ ; 2016 WL 2907918 (Tex. App. – Austin, 5/11/2016) (for proposition that no materials, even pre-hearing motions and exhibits, should not be presented to the CSC prior to a scheduled hearing).

(d) 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.

(e) In its decision, the commission shall state whether the suspended fire fighter or police officer is:

- (1) permanently dismissed from the fire or police department;
- (2) temporarily suspended from the department; or
- (3) restored to the person's former position or status in the department's classified service.

(f) If the commission finds that the period of disciplinary suspension should be reduced, the commission may order a reduction in the period of suspension. If the suspended fire fighter or police officer is restored to the position or class of service from which the person was suspended, the fire fighter or police officer is entitled to:

- (1) full compensation for the actual time lost as a result of the suspension at the rate of pay provided for the position or class of service from which the person was suspended; and<sup>15</sup>
- (2) restoration of or credit for any other benefits lost as a result of the suspension, including sick leave, vacation leave, and service credit in a retirement system. Standard payroll deductions, if any, for retirement and other benefits restored shall be made from the compensation paid, and the municipality shall make its standard corresponding contributions, if any, to the retirement system or other applicable benefit systems.

(g) The commission may suspend or dismiss a fire fighter or police officer only for violation of civil service rules and only after a finding by the commission of the truth of specific charges against the fire fighter or police officer.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1999, 76th Leg., ch. 740, Sec. 1, eff. Sept. 1, 1999.*

#### **§143.054. Demotions.**

(a) If the head of the fire or police department wants a fire fighter or police officer under his supervision or jurisdiction to be involuntarily demoted, the department head may recommend in writing to the commission that the commission demote the fire fighter or police officer.

(b) The department head must include in the recommendation for demotion the reasons the department head recommends the demotion and a request that the commission order the demotion. The department head must immediately furnish a copy of the recommendation in person to the affected fire fighter or police officer.

(c) The commission may refuse to grant the request for demotion. If the commission believes that probable cause exists for ordering the demotion, the commission shall give the fire fighter or police officer written notice to appear before the commission for a public hearing at a time and place specified in the notice. The commission shall give the notice before the 10th day before the date the hearing will be held.

(d) The fire fighter or police officer is entitled to a full and complete public hearing, and the commission may not demote a fire fighter or police officer without that public hearing.

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<sup>15</sup> *City of Temple v. Taylor*, 268 S.W.3d 852 (Tex. App. Austin, 2008, no pet.)(the employee's amount of back pay at reinstatement for wages lost during a suspension must be reduced by the amount of compensation earned by other sources).

(e) A voluntary demotion in which the fire fighter or police officer has accepted the terms of the demotion in writing is not subject to this section.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

**§143.055. Uncompensated Duty Of Police Officers.**

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) In this section, "uncompensated duty" means days of police work without pay that are in addition to regular or normal work days.

(c) The head of the police department may assign a police officer under his jurisdiction or supervision to uncompensated duty. The department head may not impose uncompensated duty unless the police officer agrees to accept the duty. If the police officer agrees to accept uncompensated duty, the department head shall give the person a written statement that specifies the date or dates on which the person will perform uncompensated duty.

(d) Uncompensated 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 days may not exceed 15.

(e) A police officer may not earn or accrue any wage, salary, or benefit arising from length of service while the person is suspended or performing uncompensated duty. The days on which a police officer performs assigned uncompensated duty may not be taken into consideration in determining eligibility for a promotional examination. A disciplinary suspension does not constitute a break in a continuous position or in service in the department in determining eligibility for a promotional examination.

(f) Except as provided by this section, a police officer who performs assigned uncompensated duty retains all rights and privileges of the person's position in the police department and of the person's employment by the municipality.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

**§143.056. Procedures After Felony Indictment Or Misdemeanor Complaint.**

(a) 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 department head may temporarily suspend the person with or without pay for a period not to exceed 30 days after the date of final disposition of the specified felony indictment or misdemeanor complaint.

(b) The department head shall notify the suspended fire fighter or police officer in writing that the person is being temporarily suspended for a specific period with or without pay and that the temporary suspension is not intended to reflect an opinion on the merits of the indictment or complaint.

(c) If the action directly related to the felony indictment or misdemeanor complaint occurred or was discovered on or after the 180th day before the date of the indictment or complaint, the department head may, within 30 days after the date of final disposition of the indictment or complaint, bring a charge against the fire fighter or police officer for a violation of civil service rules.

(d) A fire fighter or police officer indicted for a felony or officially charged with the commission of a Class A or B misdemeanor who has also been charged by the department head with civil service violations directly related to the indictment or complaint may delay the civil service hearing for not more than 30 days after the date of the final disposition of the indictment or complaint.

(e) If the department head temporarily suspends a fire fighter or police officer under this section and the fire fighter or police officer is not found guilty of the indictment or complaint in a court of competent jurisdiction, the fire fighter or police officer may appeal to the commission or to a hearing examiner for

recovery of back pay. The commission or hearing examiner may award all or part of the back pay or reject the appeal.

(f) Acquittal or dismissal of an indictment or a complaint does not mean that a fire fighter or police officer has not violated civil service rules and does not negate the charges that may have been or may be brought against the fire fighter or police officer by the department head.

(g) Conviction of a felony is cause for dismissal, and conviction of a Class A or B misdemeanor may be cause for disciplinary action or indefinite suspension.

(h) The department head may order an indefinite suspension based on an act classified as a felony or a Class A or B misdemeanor after the 180-day period following the date of the discovery of the act by the department if the department head considers delay to be necessary to protect a criminal investigation of the person's conduct. If the department head intends to order an indefinite suspension after the 180-day period, the department head must file with the attorney general a statement describing the criminal investigation and its objectives within 180 days after the date the act complained of occurred.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

### **§143.057. Hearing Examiners.**

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

(b) To exercise the choice of appealing to a hearing examiner, the appealing fire fighter or police officer must submit to the director a written request as part of the original notice of appeal required under this chapter stating the person's decision to appeal to an independent third party hearing examiner.

(c) The hearing examiner's decision is final and binding on all parties. If the fire fighter or police officer decides to appeal to an independent third party hearing examiner, the person automatically waives all rights to appeal to a district court except as provided by Subsection (j).

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

(e) The appeal hearing shall begin as soon as the hearing examiner can be scheduled. If the hearing examiner cannot begin the hearing within 45 calendar days after the date of selection, the fire fighter or police officer may, within two days after learning of that fact, call for the selection of a new hearing examiner using the procedure prescribed by Subsection (d).

(f) In each hearing conducted under this section, the hearing examiner has the same duties and powers as the commission, including the right to issue subpoenas.

(g) In a hearing conducted under this section, the parties may agree to an expedited hearing procedure. Unless otherwise agreed by the parties, in an expedited procedure the hearing examiner shall render a decision on the appeal within 10 days after the date the hearing ended.

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

(i) The hearing examiner's fees and expenses are shared equally by the appealing fire fighter or police officer and by the department. The costs of a witness are paid by the party who calls the witness.

(j) A district court may hear an appeal of a hearing examiner's award only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction or that the order was procured by fraud, collusion, or other unlawful means. An appeal must be brought in the district court having jurisdiction in the municipality in which the fire or police department is located.<sup>16, 17</sup>

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Acts 2005, 79th Leg., Ch. 869, Sec. 5, eff. September 1, 2005.*

## **SUBCHAPTER E. LEAVES**

### **§143.071. Leaves of Absence; Restriction Prohibited.**

(a) If a sufficient number of fire fighters or police officers are available to carry out the normal functions of the fire or police department, a fire fighter or police officer may not be refused a reasonable leave of absence without pay to attend a fire or police school, convention, or meeting if the purpose of the school, convention, or meeting is to secure a more efficient department and better working conditions for department personnel.

(b) A rule that affects a fire fighter's or police officer's constitutional right to appear before or to petition the legislature may not be adopted.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

### **§143.072. Military Leave Of Absence.**

(a) On written application of a fire fighter or police officer, the commission shall grant the person a military leave of absence without pay, subject to Section 143.075, to enable the person to enter a branch of the United States military service. The leave of absence may not exceed the period of compulsory military service or the basic minimum enlistment period for the branch of service the fire fighter or police officer enters.

(b) The commission shall grant to a fire fighter or police officer a leave of absence for initial training or annual duty in the military reserves or the national guard.

(c) While a fire fighter or police officer who received a military leave of absence serves in the military, the commission shall fill the person's position in the department in accordance with this chapter.

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<sup>16</sup> *City of Pasadena v. Smith*, 292 S.W.3d 14 (Tex. 2009) (hearing examiners act as arbitrators during an appeal, but may not set policy in violation of the constitutional non-delegation doctrine).

<sup>17</sup> *City of Waco v. Kelley*, 309 S.W.3d 536 (Tex. 2010) (hearing examiners may not exceed the length of involuntary temporary suspension beyond punishment established by the department head pursuant to §143.053(e) (2)).

(d) On termination of active military service, a fire fighter or police officer who received a military leave of absence under this section is entitled to be reinstated to the position that the person held in the department at the time the leave of absence was granted if the person:

- (1) receives an honorable discharge;
- (2) remains physically and mentally fit to discharge the duties of that position; and
- (3) makes an application for reinstatement within 90 days after the date the person is discharged from military service.

(e) On reinstatement, the fire fighter or police officer shall receive full seniority credit for the time spent in the military service.

(f) If the reinstatement of a fire fighter or police officer who received a military leave of absence causes a surplus in the rank to which the fire fighter or police officer was reinstated, the fire fighter or police officer who has the least seniority in the position shall be returned to the position immediately below the position to which the returning fire fighter or police officer was reinstated. If a fire fighter or police officer is returned to a lower position in grade or compensation under this subsection without charges being filed against the person for violation of civil service rules, the fire fighter or police officer shall be placed on a position reinstatement list in order of seniority. Appointments from the reinstatement list shall be made in order of seniority. A person who is not on the reinstatement list may not be appointed to a position to which the list applies until the list is exhausted.

(g) If a fire fighter or police officer employed by a municipality is called to active military duty for any period, the employing municipality must continue to maintain any health, dental, or life insurance coverage and any health or dental benefits coverage that the fire fighter or police officer received through the municipality on the date the fire fighter or police officer was called to active military duty until the municipality receives written instructions from the fire fighter or police officer to change or discontinue the coverage.

(h) In addition to other procedures prescribed by this section, a fire fighter or police officer may, without restriction as to the amount of time, voluntarily substitute for a fire fighter or police officer described by Sections 143.075(b)(1) and (2) who has been called to active federal military duty for a period expected to last 12 months or longer. A fire fighter or police officer who voluntarily substitutes under this subsection must be qualified to perform the duties of the absent fire fighter or police officer.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 287, Sec. 1, eff. June 18, 2003; Acts 2009, 81st Leg., R.S., Ch. 704, Sec. 1, eff. September 1, 2009.*

#### **§143.073. Line of Duty Illness or Injury Leave Of Absence.**

(a) A municipality shall provide to a fire fighter or police officer a leave of absence for an illness or injury related to the person's line of duty. The leave is with full pay for a period commensurate with the nature of the line of duty illness or injury. If necessary, the leave shall continue for at least one year.

(b) At the end of the one-year period, the municipality's governing body may extend the line of duty illness or injury leave at full or reduced pay. If the fire fighter's or police officer's leave is not extended or the person's salary is reduced below 60 percent of the person's regular monthly salary, and the person is a member of a pension fund, the person may retire on pension until able to return to duty.

(c) If pension benefits are not available to a fire fighter or police officer who is temporarily disabled by a line of duty injury or illness and if the year at full pay and any extensions granted by the governing body have expired, the fire fighter or police officer may use accumulated sick leave, vacation time, and other accrued benefits before the person is placed on temporary leave.

(d) If a fire fighter or police officer is temporarily disabled by an injury or illness that is not related to the person's line of duty, the person may use all sick leave, vacation time, and other accumulated time before the person is placed on temporary leave.

(e) After recovery from a temporary disability, a fire fighter or police officer shall be reinstated at the same rank and with the same seniority the person had before going on temporary leave. Another fire fighter or police officer may voluntarily do the work of an injured fire fighter or police officer until the person returns to duty.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 2001, 77th Leg., ch. 683, Sec. 1, eff. Sept. 1, 2001.*

#### **§143.074. Reappointment After Recovery From Disability.**

With the commission's approval and if otherwise qualified, a fire fighter or police officer who has been certified by a physician selected by a pension fund as having recovered from a disability for which the person has been receiving a monthly disability pension is eligible for reappointment to the classified position that the person held on the date the person qualified for the monthly disability pension.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 2001, 77th Leg., ch. 683, Sec. 2, eff. Sept. 1, 2001.*

#### **§143.075. Military Leave Time Accounts.**

(a) A municipality shall maintain military leave time accounts for the fire and police departments and must maintain a separate military leave time account for each department.

(b) A military leave time account shall benefit a fire fighter or police officer who:

- (1) is a member of the Texas National Guard or the armed forces reserves of the United States;
- (2) was called to active federal military duty while serving as a fire fighter or police officer for the municipality;
- (3) has served on active duty for a period of 12 continuous months or longer; and
- (4) has exhausted the balance of the person's vacation, holiday, and compensatory leave time accumulations.

(c) A fire fighter or police officer may donate any amount of accumulated vacation, holiday, sick, or compensatory leave time to the military leave time account in that fire fighter's or police officer's department to help provide salary continuation for fire fighters or police officers who qualify as eligible beneficiaries of the account under Subsection (b). A fire fighter or police officer who wishes to donate time to an account under this section must authorize the donation in writing on a form provided by the fire or police department and approved by the municipality.

(d) A municipality shall equally distribute the leave time donated to a military leave time account among all fire fighters or police officers who are eligible beneficiaries of that account. The municipality shall credit and debit the applicable military leave time account on an hourly basis regardless of the cash value of the time donated or used.

*Added by Acts 2003, 78th Leg., ch. 287, Sec. 2, eff. June 18, 2003.*

### **SUBCHAPTER F. MISCELLANEOUS PROVISIONS**

#### **§143.081. Determination Of Physical And Mental Fitness.**

(a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) If a question arises as to whether a fire fighter or police officer is sufficiently physically or mentally fit to continue the person's duties, the fire fighter or police officer shall submit to the commission a report from the person's personal physician, psychiatrist, or psychologist, as appropriate.

(c) If the commission, the department head, or the fire fighter or police officer questions the report, the commission shall appoint a physician, psychiatrist, or psychologist, as appropriate, to examine the fire fighter or police officer and to submit a report to the commission, the department head, and the person.

(d) If the report of the appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with the report of the fire fighter's or police officer'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, as appropriate, to examine the fire fighter or police officer. The board's findings as to the person's fitness for duty shall determine the issue.

(e) The fire fighter or police officer shall pay the cost of the services of the person's personal physician, psychiatrist, or psychologist, as appropriate. The municipality shall pay all other costs.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(h), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 890, Sec. 1, eff. Aug. 28, 1989.*

#### **§143.082. Efficiency Reports.**

(a) The commission may develop proper procedures and rules for semiannual efficiency reports and grades for each fire fighter or police officer.

(b) If the commission collects efficiency reports on fire fighters or police officers, the commission shall provide each person with a copy of that person's report.

(c) Within 10 calendar days after the date a fire fighter or police officer receives the copy of the person's efficiency report, the person may make a statement in writing concerning the efficiency report. The statement shall be placed in the person's personnel file with the efficiency report.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(i), eff. Aug. 28, 1989.*

#### **§143.083. Emergency Appointment Of Temporary Fire Fighters And Police Officers.**

(a) If a municipality is unable to recruit qualified fire fighters or police officers because of the maximum age limit prescribed by Section 143.023 and the municipality's governing body finds that this inability creates an emergency, the commission shall recommend to the governing body additional rules governing the temporary employment of persons who are 36 years of age or older.

(b) A person employed under this section:

- (1) is designated as a temporary employee;
- (2) is not eligible for pension benefits;
- (3) is not eligible for appointment or promotion if a permanent applicant or employee is available;
- (4) is not eligible to become a full-fledged civil service employee; and
- (5) must be dismissed before a permanent civil service employee may be dismissed under Section 143.085.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

#### **§143.084. Civil Service Status and Pension Benefits For Certain Fire Fighters And Police Officers.**

(a) Each fire fighter or police officer who, since December 31, 1969, has been continuously employed as a temporary employee under the provision codified as Section 143.083 has the full status of a civil service employee with all the rights and privileges granted by Section 143.005.

(b) A fire fighter or police officer covered by Subsection (a) is eligible to participate in earned pension benefits. The person may buy back service credits in the pension fund in which the permanent fire fighters or police officers in the department have participated since that person's employment. The credits may be bought at a rate determined by the actuary of the affected pension fund.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

#### **§143.085. Force Reduction And Reinstatement List.**

(a) If a municipality's governing body adopts an ordinance that vacates or abolishes a fire or police department position, the fire fighter or police officer who holds that position shall be demoted to the position immediately below the vacated or abolished position. If one or more positions of equal rank are vacated or abolished, the fire fighters or police officers who have the least seniority in a position shall be demoted to the position immediately below the vacated or abolished position. If a fire fighter or police officer is demoted under this subsection without charges being filed against the person for violation of civil service rules, the fire fighter or police officer shall be placed on a position reinstatement list in order of seniority. If the vacated or abolished position is filled or re-created within one year after the date it was vacated or abolished, the position must be filled from the reinstatement list. Appointments from the reinstatement list shall be made in order of seniority. A person who is not on the list may not be appointed to the position during the one-year period until the reinstatement list is exhausted.

(b) If a position in the lowest classification is abolished or vacated and a fire fighter or police officer must be dismissed from the department, the fire fighter or police officer with the least seniority shall be dismissed. If a fire fighter or police officer is dismissed under this subsection without charges being filed against the person for violation of civil service rules, the fire fighter or police officer shall be placed on a reinstatement list in order of seniority. Appointments from the reinstatement list shall be made in order of seniority. Until the reinstatement list is exhausted, a person may not be appointed from an eligibility list. When a person has been on a reinstatement list for three years, the person shall be dropped from the list but shall be restored to the list at the request of the commission.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

#### **§143.086. Political Activities.**

(a) While in uniform or on active duty, a fire fighter or police officer may not take an active part in another person's political campaign for an elective position of the municipality.

(b) For the purposes of this section, a person takes an active part in a political campaign if the person:

- (1) makes a political speech;
- (2) distributes a card or other political literature;
- (3) writes a letter;
- (4) signs a petition;
- (5) actively and openly solicits votes; or
- (6) makes public derogatory remarks about a candidate for an elective position of the municipality.

(c) A fire fighter or police officer may not be required to contribute to a political fund or to render a political service to a person or party. A fire fighter or police officer may not be removed, reduced in

classification or salary, or otherwise prejudiced for refusing to contribute to a political fund or to render a political service.

(d) A municipal official who attempts to violate Subsection (c) violates this chapter.

(e) Except as expressly provided by this section, the commission or the municipality's governing body may not restrict a fire fighter's or police officer's right to engage in a political activity.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

#### **§143.087. Strike Prohibition.**

(a) A fire fighter or police officer may not engage in a strike against the governmental agency that employs the fire fighter or police officer.

(b) In addition to the penalty prescribed by Section 143.016, if a fire fighter or police officer is convicted of an offense for violating this section, the person shall be automatically released and discharged from the fire or police department. After the person is discharged from the department, the person may not receive any pay or compensation from public funds used to support the fire or police department.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

#### **§143.088. Unlawful Resignation Or Retirement.**

(a) This section does not apply to a municipality with a population of 1.5 million or more.

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

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

(d) An offense under this section is a Class A misdemeanor.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

#### **§143.089. Personnel File.**

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum, or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to sustain the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by Subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

(d) If a negative letter, memorandum, document, or other notation of negative impact is included in a fire fighter's or police officer's personnel file, the director or the director's designee shall, within 30 days after the date of the inclusion, notify the affected fire fighter or police officer. The fire fighter or police officer may, on or before the 15th day after the date of receipt of the notification, file a written response to the negative letter, memorandum, document, or other notation.<sup>18</sup>

(e) The fire fighter or police officer is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file. The municipality may charge the fire fighter or police officer a reasonable fee not to exceed actual cost for any copies provided under this subsection.

(f) The director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

(g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.<sup>19</sup>

*Added by Acts 1989, 71st Leg., ch. 1, Sec. 25(c), eff. Aug. 28, 1989; Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 84, eff. Sept. 1, 1989.*

#### **SUBCHAPTER G – MUNICIPALITIES OVER 1.5 MILLION [OMITTED]**

#### **SUBCHAPTER H – MUNICIPALITIES OVER 1.5 MILLION RE FIREFIGHTS [HOUSTON PROVISIONS OMITTED]**

### **CHAPTER 150. MISCELLANEOUS PROVISIONS AFFECTING MUNICIPAL OFFICERS AND EMPLOYEES.**

#### **SUBCHAPTER A. INVOLVEMENT OF FIRE FIGHTERS AND POLICE OFFICERS IN POLITICAL ACTIVITIES.**

##### **§150.001. Application Of Subchapter To Certain Municipalities With Population Of 10,000 Or More.**

This subchapter applies only to a municipality with a population of 10,000 or more, but does not apply to a municipality in which Chapter 143 applies.

*Added by Acts 1989, 71st Leg., ch. 1, Sec. 34(a), eff. Aug. 28, 1989.*

##### **§150.002. Political Activities.**

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<sup>18</sup> See Atty Gen Op JC-0257 (July 8, 2000) for an analysis of the appropriate treatment of a reprimand and a discussion of its proper location.

<sup>19</sup> See *San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App. – San Antonio 1993, writ denied); see also *In re Jobe*, 42 S.W. 3d 174 (Tex. App. – Amarillo 2001, no writ)(discussion of departmental (g) file); and *Abbott v. Corpus Christi*, 109 S.W.3d 113 (Tex. App. – Corpus Christi 2003, no writ)(g) file privilege is restricted if department imposes discipline)

(a) While in uniform or on active duty, an employee of the fire or police department of the municipality may not engage in a political activity relating to a campaign for an elective office.

(b) For the purposes of this section, a person engages in a political activity if the person:

- (1) makes a public political speech supporting or opposing a candidate;
- (2) distributes a card or other political literature relating to the campaign of a candidate;
- (3) wears a campaign button;
- (4) circulates or signs a petition for a candidate;
- (5) solicits votes for a candidate; or
- (6) solicits campaign contributions for a candidate.

(c) While out of uniform and not on active duty, an employee of the fire or police department may engage in a political activity relating to a campaign for an elective office, including each activity listed by Subsection (b), except that the person may not solicit campaign contributions for a candidate other than from members of an employee organization to which that person belongs.

*Added by Acts 1989, 71st Leg., ch. 1, Sec. 34(a), eff. Aug. 28, 1989.*

### **§150.003. Restriction Prohibited.**

The municipality may not restrict the right of an employee of the fire or police department to engage in a political activity permitted by this subchapter.

*Added by Acts 1989, 71st Leg., ch. 1, Sec. 34(a), eff. Aug. 28, 1989.*

## **SUBCHAPTER B. RESIDENCY REQUIREMENTS**

### **§150.021. Residency Requirements For Municipal Employees.**

(a) A municipality may not require residency within the municipal limits as a condition of employment with the municipality. A municipality may require residency within the United States as a condition of employment.

(b) The prohibition under Subsection (a) does not apply to residency requirements for:

- (1) candidates for or holders of a municipal office, including a position on the governing body of the municipality; or
- (2) municipal department heads appointed by the mayor or governing body of the municipality.

(c) The governing body of a municipality may prescribe reasonable standards with respect to the time within which municipal employees who reside outside the municipal limits must respond to a civil emergency. The standards may not be imposed retroactively on any person in the employ of the municipality at the time the standards are adopted.

*Added by Acts 1989, 71st Leg., ch. 1, Sec. 35(a), eff. Aug. 28, 1989.*

## **CHAPTER 173. TEMPORARY SALARY PAYMENTS FOR MUNICIPAL AND COUNTY EMPLOYEES CALLED TO ACTIVE DUTY.**

**§173.001. Employees Subject To Chapter.**

**§173.002. Salary Continuation.**

**§173.003. Manner Of Payment.**

**§173.004. Rules.**

**§173.005. Other Benefits Unaffected.**

## **CHAPTER 175. RIGHT OF EMPLOYEES OF CERTAIN POLITICAL SUBDIVISIONS TO PURCHASE CONTINUED HEALTH COVERAGE AT RETIREMENT**

**§ 175.001. Applicability.**

**§ 175.002. Right To Purchase Continued Coverage.**

**§ 175.003. Level Of Coverage.**

**§ 175.004. Payment for Coverage.**

**§ 175.005. Duty to Inform Retiree Of Rights.**

**§175.006. Certain Matters Not Affected.**

**§175.007. Exemptions.**

## **CHAPTER 180. MISCELLANEOUS PROVISIONS AFFECTING OFFICERS AND EMPLOYEES OF MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS.**

**§180.001. Coercion Of Police Officer Or Fire Fighter In Connection With Political Campaign.**

(a) An individual commits an offense if the individual coerces a police officer or a fire fighter to participate or to refrain from participating in a political campaign.

(b) An offense under this section is a misdemeanor and is punishable by a fine of not less than \$500 or more than \$2,000, confinement in the county jail for not more than two years, or both a fine and confinement.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.*

**§180.002. Defense Of Civil Suits Against Peace Officers, Fire Fighters, And Emergency Medical Personnel.**

(a) In this section, "peace officer" has the meaning assigned by Article 2.12, Code of Criminal Procedure.

(b) A municipality or special purpose district shall provide a municipal or district employee who is a peace officer, fire fighter, or emergency medical services employee with legal counsel without cost to

the employee to defend the employee against a suit for damages by a party other than a governmental entity if:

- (1) legal counsel is requested by the employee; and
- (2) the suit involves an official act of the employee within the scope of the employee's authority.

(c) To defend the employee against the suit, the municipality or special purpose district may provide counsel already employed by it or may employ private counsel.

(d) If the municipality or special purpose district fails to provide counsel as required by Subsection (b), the employee may recover from it the reasonable attorney's fees incurred in defending the suit if the trier of fact finds:

- (1) that the fees were incurred in defending a suit covered by Subsection (b); and
- (2) that the employee is without fault or that the employee acted with a reasonable good faith belief that the employee's actions were proper.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1989, 71st Leg., ch. 1, Sec. 42(a), eff. Aug. 28, 1989.*

#### **§180.003. Maximum Duty Hours Of Peace Officers.**

(a) In a county with a population of 239,000 to 242,000, a sheriff, deputy, constable, or other peace officer of the county or a municipality located in the county may not be required to be on duty more than 48 hours a week unless the peace officer is called on by a superior officer to serve during an emergency as determined by the superior officer.

(b) Hours of duty over 48 hours a week, compiled by a peace officer under Subsection (a), may be treated as overtime and may be deducted from future required hours of duty if:

- (1) the overtime is used within one year after it is compiled; and
- (2) the peace officer obtains the permission of the superior officer.

*Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987; Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 93, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 72, eff. Sept. 1, 2001.*

#### **§180.004. Working Conditions For Pregnant Employees.**

(a) In this section, "office" means a municipal or county office, department, division, program, commission, bureau, board, committee, or similar entity.

(b) A municipality or a county shall make a reasonable effort to accommodate an employee of the municipality or county who is determined by a physician to be partially physically restricted by a pregnancy.

(c) If the physician of a municipal or county employee certifies that the employee is unable to perform the duties of the employee's permanent work assignment as a result of the employee's pregnancy and if a temporary work assignment that the employee may perform is available in the same office, the office supervisor who is responsible for personnel decisions shall assign the employee to the temporary work assignment.

*Added by Acts 2001, 77th Leg., ch. 533, Sec. 1, eff. Sept. 1, 2001.*

#### **§180.005. Appointments To Local Governing Bodies.**

(a) In this section, "local government" means a county, municipality, or other political subdivision of this state.

(b) An appointment to the governing body of a local government shall be made as required by the law applicable to that local government and may be made with the intent to ensure that the governing body is representative of the constituency served by the governing body.

(c) A local government that chooses to implement Subsection (b) shall adopt procedures for the implementation.

*Added by Acts 2003, 78th Leg., ch. 301, Sec. 8, eff. Sept. 1, 2003.*

**§180.006. Sovereign Or Governmental Immunity Waived For Certain Claims.**

(a) This section applies only to a firefighter or police officer covered by:

- (1) Chapter 141, 142, or 143 or this chapter;
- (2) a municipal charter provision conferring civil service benefits of a municipality that has not adopted Chapter 143; or
- (3) a municipal ordinance enacted under Chapter 142 or 143.

(b) A firefighter or police officer described by Subsection (a) who alleges the employing municipality's denial of monetary benefits associated with the recovery of back pay authorized under a provision listed in Subsection (a) or a firefighter described by Subsection (a) who alleges the denial of monetary civil penalties associated with recovery of back pay owed under Section 143.134(h) may seek judicial review of such denial only as provided in Subsections (e) and (f), provided that if there is no applicable grievance, administrative or contractual appeal procedure available under Subsection (e), the firefighter or police officer may file suit against the employing municipality directly in district court under the preponderance of the evidence standard of review.

(c) Sovereign and governmental immunity of the employing municipality from suit and liability is waived only to the extent of liability for the monetary benefits or monetary civil penalties described by Subsection (b). This section does not waive sovereign or governmental immunity from suit or liability for any other claim, including a claim involving negligence, an intentional tort, or a contract unless otherwise provided by the statute.

(d) This section does not:

- (1) grant immunity from suit to a local governmental entity;
- (2) waive a defense or a limitation on damages, attorney's fees, or costs available to a party to a suit under this chapter or another statute, including a statute listed in Subsection (a)(1); or
- (3) modify an agreement under Chapter 142, 143, or 174.

(e) Before seeking judicial review as provided by Subsection (b), a firefighter or police officer must initiate action pursuant to any applicable grievance or administrative appeal procedures prescribed by state statute or agreement and must exhaust the grievance or administrative appeal procedure.

(f) If judicial review is authorized under statute, judicial review of the grievance or administrative appeal decision is under the substantial evidence rule, unless a different standard of review is provided by the provision establishing the grievance or administrative appeal procedure.

(g) This section does not apply to an action asserting a right or claim based wholly or partly, or directly or indirectly, on a referendum election held before January 1, 1980, or an ordinance or resolution implementing the referendum.

*Added by Acts 2007, 80th Leg., R.S., Ch. [1200](#), Sec. 1, eff. June 15, 2007.*

## **CHAPTER 614. PEACE OFFICERS AND FIRE FIGHTERS**

### **SUBCHAPTER A. LEGISLATIVE LEAVE FOR PEACE OFFICER OR FIRE FIGHTER**

### **SUBCHAPTER B. COMPLAINT AGAINST LAW ENFORCEMENT OFFICER OR FIRE FIGHTER**

#### **§614.021. Applicability Of Subchapter.**

(a) Except as provided by Subsection (b), this subchapter applies only to a complaint against:

- (1) a law enforcement officer of the State of Texas, including an officer of the Department of Public Safety or of the Texas Alcoholic Beverage Commission;
- (2) a fire fighter who is employed by this state or a political subdivision of this state;
- (3) a peace officer under Article 2.12, Code of Criminal Procedure, or other law who is appointed or employed by a political subdivision of this state; or
- (4) a detention officer or county jailer who is appointed or employed by a political subdivision of this state.

(b) This subchapter does not apply to a peace officer or fire fighter appointed or employed by a political subdivision that is covered by a meet and confer or collective bargaining agreement under Chapter 143 or 174, Local Government Code, if that agreement includes provisions relating to the investigation of, and disciplinary action resulting from, a complaint against a peace officer or fire fighter, as applicable.

*Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993; Acts 2005, 79th Leg., Ch. 507, Sec. 1, eff. September 1, 2005.*

#### **§614.022. Complaint To Be In Writing And Signed By Complainant.**

To be considered by the head of a state agency or by the head of a fire department or local law enforcement agency, the complaint must be:

- (1) in writing; and
- (2) signed by the person making the complaint.

*Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993; Acts 2005, 79th Leg., Ch. 507, Sec. 1, eff. September 1, 2005.*

#### **§ 614.023. Copy Of Complaint To Be Given To Officer Or Employee.**

(a) A copy of a signed complaint against a law enforcement officer of this state or a fire fighter, detention officer, county jailer, or peace officer appointed or employed by a political subdivision of this state shall be given to the officer or employee within a reasonable time after the complaint is filed.<sup>20</sup>

(b) Disciplinary action may not be taken against the officer or employee unless a copy of the signed complaint is given to the officer or employee.<sup>21</sup>

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<sup>20</sup> *Treadway v. Holder*, 309 S.W.3d 780 (Tex. App.—Austin 2010, no pet.) (the statute does not specify the origin of the complaint; therefore it may be filed in writing, and signed by an external or internal source to be a valid complaint.).

<sup>21</sup> *City of Athens v. MacAvoy*, 260 S.W.3d 676 (Tex. App.—Tyler 2008, no pet.) (the Court found that a hearing examiner did not exceed his/her jurisdiction in construing the statute to determine that the city could not discipline employee without giving the employee a signed copy of the complaint. The Court stated that the hearing examiner's interpretation was within reason, and the trial court was correct in

(c) In addition to the requirement of Subsection (b), the officer or employee may not be indefinitely suspended or terminated from employment based on the subject matter of the complaint unless:

- (1) the complaint is investigated; and
- (2) there is evidence to prove the allegation of misconduct.

*Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993; Amended by: Acts 2005, 79th Leg., Ch. 507, Sec. 1, eff. September 1, 2005.*

## **SUBCHAPTER C. PROHIBITION AGAINST COLLECTING DEBT FOR ANOTHER**

### **§614.041. Collecting Debt For Another; Offense.**

## **SUBCHAPTER D. PURCHASE OF AGENCY-ISSUED FIREARM OF HONORABLY RETIRED OR DECEASED PEACE OFFICER**

## **SUBCHAPTER E. POLYGRAPH EXAMINATIONS**

### **§614.061. Definition.**

In this subchapter, "peace officer" means a person who:

- (1) is elected, appointed, or employed by a governmental entity; and
- (2) is a peace officer under Article 2.12, Code of Criminal Procedure, or other law.

*Added by Acts 1997, 75th Leg., ch. 1303, Sec. 1, eff. June 20, 1997.*

### **§614.062. Applicability Of Subchapter.**

This subchapter does not apply to a peace officer to whom Section 411.007 applies.

*Added by Acts 1997, 75th Leg., ch. 1303, Sec. 1, eff. June 20, 1997.*

### **§614.063. Polygraph Examination.**

(a) A peace officer may not be suspended, discharged, or subjected to any other form of employment discrimination by the organization employing or appointing the peace officer because the peace officer refuses to submit to a polygraph examination as part of an internal investigation regarding the conduct of the peace officer unless:

- (1) the complainant submits to and passes a polygraph examination; or
- (2) the peace officer is ordered to take an examination under Subsection (d) or (e).

(b) Subsection (a)(1) does not apply if the complainant is physically or mentally incapable of being polygraphed.

(c) 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 matter under investigation.

(d) The head of the law enforcement organization that employs or appoints a peace officer may require the peace officer to submit to a polygraph examination under this subsection if:

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concluding that it did not have jurisdiction to determine whether the hearing examiner erred in the interpretation.)

(1) the subject matter of the complaint is confined to the internal operations of the organization employing or appointing the peace officer;

(2) the complainant is an employee or appointee of the organization employing or appointing the peace officer; and

(3) the complaint does not appear to be invalid based on the information available when the polygraph is ordered.

(e) The head of the law enforcement organization that employs or appoints a peace officer may require the peace officer to submit to a polygraph examination under this subsection if the head of the law enforcement organization considers the circumstances to be extraordinary and the head of the law enforcement organization believes that the integrity of a peace officer or the law enforcement organization is in question. The head of the law enforcement organization shall provide the peace officer with a written explanation of the nature of the extraordinary circumstances and how the integrity of a peace officer or the law enforcement organization is in question.

*Added by Acts 1997, 75th Leg., ch. 1303, Sec. 1, eff. June 20, 1997.*

## **SUBCHAPTER J. STANDARDS FOR CERTAIN LAW ENFORCEMENT OFFICERS**

### **§614.172. PHYSICAL FITNESS PROGRAMS AND STANDARDS.**

## **SUBCHAPTER K. INSURANCE COVERAGE REQUIRED FOR VOLUNTEER POLICE FORCE MEMBERS.**

# **TEXAS OCCUPATIONS CODE**

## **CHAPTER 1701. LAW ENFORCEMENT OFFICERS.**

### **SUBCHAPTER J. EMPLOYMENT RECORDS**

### **SUBCHAPTER K. DISCIPLINARY PROCEDURES.**

### **SUBCHAPTER L. CRIMINAL PENALTY.**