

SUBJECT: Austin firefighter and police officer civil service revisions

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 7 ayes — Bailey, Davila, Ehrhardt, Staples, Thompson, Tillery, Woolley

1 nay — Hill

1 absent — Conley

SENATE VOTE: On final passage, April 4 — 30-0

WITNESSES: (*On House companion bill, HB 1929*):

For — Jeff Pike, Austin Association of Professional Firefighters; Mike Lummus, Mike Sheffield, Austin Police Association; Alfredo Valencia; Ed Franco, Texas Association of Hispanic Firefighters

Against — None

DIGEST: SB 863 would allow certain municipalities to negotiate agreements with police officer or firefighter associations, allow police and firefighter department heads to make more than two assistant appointments and follow specified police officer and firefighter investigation procedures. SB 863 would only apply to cities with a population greater than 460,000 but fewer than 1.5 million, that operate under a city manager form of government and that have not adopted Fire and Police Employee Relations Act statutes (Austin).

SB 863 would take immediate effect if approved by a two thirds membership of each house.

Bargaining agreements. SB 863 would allow a municipal public employer to recognize an association as the sole and exclusive bargaining agent for all covered firefighters or police officers unless recognition was withdrawn by a majority of the covered firefighters or police officers.

"Association" would be defined as an organization in which firefighters or police officers participate and that exists for the purpose in whole or in part of dealing with one or more employers, whether public or private. A question of whether an association is the majority representative would be resolved by a fair election conducted according to procedures agreed upon by the parties or by the American Arbitration Association.

The public employer's manager or executive would appoint two teams — one for fire department issues and one for police department issues — to represent the public employer as its sole and exclusive bargaining agent.

SB 863 would not require the public employer and association to meet and confer or reach an agreement on any issue. An agreement would be required to be reduced to writing, and a term or condition on which there was no agreement would be governed by applicable statutes, local ordinances and civil service rules. The association could not advocate the illegal right to strike by public employees.

An agreement would be considered a public record under the Open Records Act and would be available after the agreement is ratified by the city's governing body. A written agreement would be binding if ratified by the city and by a majority vote of the association. The agreement would supersede a previous conflicting statute and would preempt any contrary statute, executive order, local ordinance or rule adopted by the state or political subdivision.

The city could be required to submit to binding interest arbitration only if approved by a majority of those voting in a public referendum conducted in accordance with the city's charter.

Agreement repeal. A petition signed by at least 10 percent of the qualified voters could call for the repeal of the agreement. The governing body would be required to either repeal the agreement or call an election for the next city election or for a special election. The ballot would be required to be printed to permit voting for or against the proposition.

Police and firefighter investigations. SB 863 would allow an investigator to interrogate a firefighter or a police officer only during normally assigned

work hours except under certain conditions. No part of an investigation could be conducted at the person's home without permission. An investigator could not be the complainant, the ultimate decisionmaker or person involved in the alleged misconduct. The investigator would be required to notify a firefighter or police officer in writing within 48 hours of an initial interrogation the allegations in the complaint.

An interrogation session could not be unreasonably long and would have to allow interruptions to permit the officer or firefighter to attend to personal physical necessities. An investigator could not threaten a firefighter or police officer who is subject of an investigation with punitive action during an interrogation although the investigator could inform the person that failure to answer truthfully could result in a punitive action.

Reprimands, findings and determinations could not be placed in a personnel file without giving the police officer or firefighter an opportunity to read and sign the document. A police officer or firefighter could refuse to sign the document or could respond to the document in a written notification that would be placed in the file. A violation of this subsection could be considered during a disciplinary appeal hearing if the violation substantially impaired the person's ability to defend against the allegations.

Police officers or firefighters could not be required to submit to a polygraph test unless the complainant submits to and passes a polygraph examination or the department chief orders the examination due to extraordinary circumstances. Polygraph results relating to the complaint could not be admitted in a proceeding before the civil service commission or a hearing examiner.

SUPPORTERS SAY: SB 863 would enact civil service provisions that have the support of the Austin mayor, city management, police and fire department heads and police officers and firefighters, who have spent months working together to formulate appropriate legislation. Much of the bill is patterned after existing civil service statutes applicable only to Houston, with adjustments to fit the needs and operations of Austin.

Placing these provisions in law would assure the maintenance of many Austin policies now carried out under informal agreements and would give

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more substantive legal backing to negotiated agreements that span changing administrations or city council terms.

Negotiated agreements could help both city management and city employees by establishing principles or guidelines that would not have to be revisited annually or with changing administrations and, in doing so, could help stabilize the budget process and other city deliberations.

SB 863 specifically would not require the city and the associations to meet, confer or agree to anything and would not deny a municipality local control over wages, salaries, pay rates or other conditions of employment. However, collective bargaining is a legitimate form of negotiation and associations can represent important employee and public priority viewpoints that may be overlooked even by the most conscientious city manager.

**OPPONENTS
SAY:**

SB 863 would enact collective bargaining provisions that could be used by subsequent legislatures to apply to other municipalities.

Collective bargaining is inappropriate for city government — city council members are elected by the public to run city operations and to establish public policy. Police and firefighter associations are not accountable to the public and owe allegiance only to the professionals they represent. City council members, and the city managers who report to them, should be the sole arbiters on employee wages, benefits and other conditions of employment.