

SUBJECT: Revising fire fighter civil service promotion and appeal procedures

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 6 ayes — Talton, Wong, A. Allen, Bailey, Blake, Menendez

0 nays

1 absent — Rodriguez

WITNESSES: For — Mike Higgins, Texas State Association of Fire Fighters

Against — None

BACKGROUND: Local Government Code, ch. 143 regulates hiring and promotions for police and fire departments and creates a system for handling complaints for cities that have adopted the chapter and created a Fire Fighters' and Police Officers' Civil Service Commission. To be considered for promotion, eligible police officers and fire fighters must take a written examination. On the examination, each police officer or fire fighter is entitled to receive one additional point for each year of seniority in that department, up to 10 points. A grade of 70 or above is passing. The grades of each fire fighter or police officer who took the examination is placed on an eligibility list for promotion. Each promotional eligibility list is valid for one year, after which time a new examination may be held.

When a vacancy occurs in a non-appointed, nonentry position, the person with the highest grade on the eligibility list is appointed to the position unless the department head has a valid reason for not appointing that person. Before appointing a candidate with a lower grade for a position, the department head must personally discuss the reason with the person being bypassed and file the reason in writing with the commission. The bypassed candidate may request a review of that decision by the commission.

Under sec. 143.057, a fire fighter or police officer who has been suspended, indefinitely suspended, passed over for promotion, or recommended for demotion may appeal to the commission or to an independent third party hearing examiner. 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. The costs of a hearing are shared equally by the department and the appealing party, and the examiner's decision is final and binding.

DIGEST:

CSHB 2173 would require that a fire fighter receive a passing grade on the promotional examination before any seniority points could be added to the score. The bill would require the head of a fire department to provide a bypassed fire fighter with a copy of the written notice sent to the commission about why the fire fighter was bypassed, and would allow the bypassed candidate to request a review by a third party hearing examiner. The notice provided to the bypassed candidate would include a statement that the candidate could appeal to a hearing examiner rather than to the commission.

The bill also would define the date on which a vacancy occurred for a position in a fire department as the date the position was vacated by a resignation, retirement, death, promotion, or issuance of an indefinite suspension.

The bill would take effect September 1, 2005, and only would apply to a promotional examination given to a fire fighter, or a promotional bypass that occurred on or after that date.

**SUPPORTERS
SAY:**

CSHB 2173 would clarify existing laws on promotion of fire fighters to ensure that these laws were fairly and consistently applied.

Under current law, it is unclear whether seniority points should be counted on a promotional examination if the candidate does not have a passing grade. As a result, some fire departments have misapplied the statute by adding these points to the score even if the candidate does not have a passing grade - points that in some cases have raised a candidate's grade above passing and made the person eligible for promotion. The promotion of these unqualified candidates compromises the quality of a fire department. By specifying that these points are to be awarded only if a fire fighter passes the examination, CSHB 2173 would ensure that fire departments properly grade promotional examinations and promote only qualified candidates.

The bill would restore the right of a bypassed fire fighter candidate to request a review by a third party hearing examiner rather than by the

commission. Several recent judicial decisions determined that a police officer or fire fighter had a right to appeal a bypass only if the bypass occurred for disciplinary reasons. This was not the original intent of the law, and CSHB 2173 would restore this section of the law to the way it was practiced for the last 20 years. Fire fighters should have the right to appeal a promotional bypass to ensure that promotional decisions are not biased or unfairly tinged with interpersonal issues.

The bill also would define when a vacancy occurred at a fire department. Currently, some fire departments have waited until all appeals for a fire fighter's indefinite suspension have been exhausted before declaring the position vacant and seeking a replacement. These appeals can sometimes go on for years, with the result that some departments have faced long-term inadequate staffing levels. CSHB 2173 would clarify that a fire department could declare a vacancy as soon as someone had been placed on indefinite suspension so that the department could fill the position and maintain staffing levels adequate safely and effectively to carry out their duties.

The bill would not include police departments because the unique circumstances surrounding police work make these provisions inappropriate for police officers. Unlike fire fighters, who rarely are accused of criminal misconduct, police officers often are the target of criminal charges, due, for example, to their role in arresting suspects. Allowing a police department to fill a vacancy while an officer's appeal was pending would complicate the officer's right to due process. If an officer subsequently were reinstated, it would be unclear whether the person who had filled the position should be demoted or another position created, or even if these options would be available. Consequently, police departments should be required to wait until all appeals are exhausted before filling a vacancy due to an indefinite suspension.

**OPPONENTS
SAY:**

Allowing every fire fighter who is passed over for promotion to appeal the decision could lead to a significant increase in hearings and cost to fire departments. While third party hearings are necessary in some instances, they are inappropriate during the promotions process, when every fire fighter who is passed over is likely to request an appeal whether or not there is cause. Candidates for promotion already may appeal to the commission for review if they are bypassed, and the commission - which deals with these topics regularly and is designed to create an impartial system - is still the best place for these appeals.

OTHER
OPPONENTS
SAY:

The bill should apply to both fire and police departments. Police candidates for promotion should be held to the same standard of competency and should have the same right to appeal when passed over for promotion. If the vacancy provision would be inappropriate for police departments, then only that provision could be applied exclusively to fire fighters.

It is not clear whether some of the bill's provisions might apply to Houston. The city of Houston should be explicitly bracketed out of the bill, as it is for many provisions in the civil service statute because Houston has a meet-and-confer process that allows for it to negotiate these kinds of issues with its fire fighters.

NOTES:

As filed, the bill would have applied to both police and fire departments. The committee substitute restricted the bill to fire departments.

The companion bill, SB 1050 by Van de Putte, passed the Senate by 28-1 (Brimer) on April 29 and was reported favorably, without amendment, by the House Urban Affairs Committee on May 4, making it eligible to be considered in lieu of HB 2173.