

BILL ANALYSIS

Senate Research Center

S.B. 1289
By: Luna
Intergovernmental Relations
4-3-97
Committee Report (Amended)

DIGEST

Currently, Texas law provides standardized rules for the maintenance of fire and police employee personnel files in cities covered by municipal civil service. However, some rules do not apply to state police or fire departments or to police and fire departments in non-civil service municipalities. This bill requires personnel files to be kept for certain law enforcement officers and fire protection personnel; and provides a criminal penalty.

PURPOSE

As proposed, S.B. 1289 requires personnel files to be kept for certain law enforcement officers and fire protection personnel; and provides a criminal penalty.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 614, Government Code, by adding Subchapter E, as follows:

SUBCHAPTER E. PERSONNEL RECORDS OF CERTAIN LAW ENFORCEMENT AND FIRE PROTECTION PERSONNEL

Sec. 614.071. DEFINITIONS. Defines "custodian," "employee record," "employer," and "law enforcement or fire protection employee."

Sec. 614.072. INAPPLICABILITY OF SUBCHAPTER. Provides that this subchapter does not apply to a law enforcement or fire protection employee who is not covered by Chapter 143, Local Government Code, or employed by a municipality with a population of less than 10,000.

Sec. 614.073. PERMANENT PERSONNEL FILE. Requires a law enforcement or fire protection employee's permanent personnel file to contain any employee record relating to certain information about the employee. Prohibits an employee record relating to alleged misconduct by a law enforcement or fire protection employee from being placed in the employee's permanent personnel file if it is determined that there is insufficient evidence to sustain the charge of misconduct, unless the record relates to an investigation of misconduct against a law enforcement or fire protection employee that was pending at the time the employee resigned from the employer. Requires the custodian to ensure that an employee record required to be included in a law enforcement or fire protection employee's permanent personnel file is placed in the file, and a record required to be excluded from the file is excluded.

Sec. 614.074. REMOVAL OF CERTAIN RECORDS FROM PERMANENT FILE. Requires certain records to be removed from an employee's personnel file if certain persons determine that the disciplinary action was taken without just cause, or the charge of misconduct was not supported by sufficient evidence.

Sec. 614.075. NOTIFICATION TO EMPLOYEE OF CERTAIN NEGATIVE RECORDS; EMPLOYEE RESPONSE. Requires the custodian to notify the affected employee that the record has been placed in the file by a certain date. Authorizes an employee to file a written response to the negative employee record with the custodian by a certain date. Requires the custodian to place the response in the employee's file with the negative record.

Sec. 614.076. EMPLOYEE'S RIGHT TO COPY OF RECORD IN PERMANENT FILE. Provides that a law enforcement or fire protection employee is entitled to a copy of any employee record placed in the employee's permanent personnel file on request. Authorizes the employer to charge the employee a reasonable fee not to exceed the actual cost for copies provided under this section.

Sec. 614.077. RELEASE OF INFORMATION IN PERMANENT FILE. Prohibits a custodian or employer from releasing an employee record or information that is required to be contained in a law enforcement or fire protection employee's permanent personnel file unless certain conditions are met. Authorizes an employer to use a photograph of a law enforcement or fire protection employee without the employee's written consent for purposes of identification of the employee by a member of the public.

Sec. 614.078. DISPOSAL OF EMPLOYEE RECORD. Authorizes a custodian to dispose of the permanent personnel file or an employee record of a former law enforcement or fire protection employee in accordance with the employer's policy and applicable law.

Sec. 614.079. DETERMINATION CONCERNING CHARGE OF MISCONDUCT NOT REQUIRED. Provides that Sections 614.073(b) and 614.074 do not require an employer or the governing body of an employing entity to make a determination concerning a charge of misconduct or a disciplinary action taken against an employee.

Sec. 614.080. PRIVATE PERSONNEL FILE. Authorizes an employee to maintain a private personnel file on a law enforcement or fire protection employee for the employer's use. Prohibits the employer from releasing information contained in an employee's private personnel file to a person requesting information relating to the employee.

Sec. 614.081. REFERRAL OF PERSON REQUESTING INFORMATION RELATING TO PERSONNEL FILE. Requires an employer to refer a person who requests information relating to a law enforcement or fire protection employee's permanent or private personnel file to the custodian.

Sec. 614.082. PENALTY. Provides that a person commits a Class C misdemeanor if the person violates Section 614.077 or Section 614.080(b).

SECTION 2. Amends Section 143.089, Local Government Code, by adding Subsection (h), to provide that each photograph of a fire fighter or police officer in the possession of the employing department or municipality is considered to be part of the personnel file of the fire fighter or police officer. Prohibits the employing department or municipality from releasing a photograph of a fire fighter or police officer except as provided by Subsection (f). Authorizes the employing department or municipality to use a photograph of a fire fighter or police officer without the person's written permission for purposes of identification of the fire fighter or police officer by a member of the public.

SECTION 3. Effective date: September 1, 1997.

SECTION 4. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amendment 1.

Page 2, lines 3 through 5, replace "(1) covered by Chapter 143, Local Government Code; or (2) employed by a municipality with a population of less than 10,000" with "(1) covered by

Chapter 143, Local Government Code; (2) employed by a municipality with a population of less than 10,000; or (3) employed by a county."