

**SUBJECT:** Eliminating hearings for discharged employees of DPS

**COMMITTEE:** Homeland Security and Public Safety — favorable, without amendment

**VOTE:** 9 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Kleinschmidt, Lavender, Sheets, Simmons

0 nays

**WITNESSES:** For — None

Against — (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas)

On — (*Registered, but did not testify*: Phillip Adkins, Texas Department of Public Safety)

**BACKGROUND:** Government Code, sec. 411.007 outlines how DPS may terminate officers and employees. An officer or employee who is discharged is entitled to appeal to the Public Safety Commission, during which time the officer or employee is suspended without pay. Discharged officers and employees may apply to the commission for a public hearing, during which the commission affirms or sets aside the discharge on the basis of the evidence presented.

**DIGEST:** HB 3805 would allow only a commissioned officer to appeal and receive a public hearing after being discharged from the commission. This process would no longer be available to discharged, noncommissioned employees.

The bill would take effect September 1, 2013, and would only apply to DPS officers and employees discharged on or after the effective date.

**SUPPORTERS SAY:** HB 3805 would align the discharge process for noncommissioned employees of DPS with the process at other agencies, where discharged employees are not entitled to appeal. The unequal treatment of DPS employees is unfair, and it requires the commission to spend an unnecessary amount of time and energy on hearings that can last about 20 to 30 hours on average for a single case. The Public Safety Commission

meets about once a month, and much of the time that should be spent on strategic oversight of the department instead is spent on holding full evidentiary discharge hearings.

Holding hearings for noncommissioned employees also takes up time that could be devoted to holding discharge hearings for commissioned officers. At present, a commissioned officer could wait as long as a year before receiving a discharge hearing before the commission. It is appropriate that discharged commissioned officers receive a hearing for reasons of transparency and to protect the officers against politicized retaliation, for which they are uniquely at risk. Finally, DPS officers hold positions entailing a high degree of personal engagement and sacrifice. Unlike state employees in less critical and potentially hazardous positions, DPS officers should have the right to challenge their dismissal.

Retaining the hearing procedure for commissioned officers helps DPS recruit and retain officers because other local law enforcement agencies frequently offer these types of appeal procedures for officers. To adequately protect the public safety, DPS requires the ability to offer the same job protections to applicants as competitor law enforcement agencies.

OPPONENTS  
SAY:

This bill would be unfair to DPS noncommissioned employees. They have a right to expect current due process and fair hearing protections from their employer following discharge. Some noncommissioned employees hold positions, such as crime lab technicians, that may also be subject to political retaliation.

By removing the ability of noncommissioned employees from appealing to the commission, the bill would create ambiguity as to how dismissal appeals would be handled. If HB 3805 were enacted, the law still would prevent the department from discharging noncommissioned employees without just cause. DPS employees denied this right might turn to the courts to appeal their dismissals, a more expensive and protracted process for all involved. Keeping the responsibility for these appeals with the Public Safety Commission enables resolution of these cases more quickly and at a more appropriate level.