



OSE

OFFICE OF STATE EXAMINER
FIRE & POLICE CIVIL SERVICE

GENERAL CIRCULAR OSE 2015 **October 1, 2015**

During the 2015 Regular Session of the Louisiana Legislature, several bills were enacted that affect the Louisiana Fire and Police Civil Service System as well as the fire and police services, generally. The Office of State Examiner has summarized the Acts below for informational purposes, but these comments should not be taken as legal advice, opinion, or interpretation. The full text of the Acts and Resolutions may be accessed from our website at www.ose.louisiana.gov or the Louisiana State Legislature's website at www.legis.la.gov/legis/BillSearch.aspx?sid=current. The summary of each Act below references the bill number, author, Revised Statute enacted or reenacted, and the effective date of the Act.

ACT 334

HB 447 - Rep. Montoucet

Enacts R.S. 33:2495
Effective August 1, 2015

Applies to municipalities with a population of not less than two hundred thousand persons and not more than two hundred forty thousand persons as of the most recent federal decennial census (currently Baton Rouge only). Act 334 provides that all persons appointed from the entry-level Firefighter employment list, including those who possess certification as Firefighter I in accordance with NFPA

Professional Standard No. 1001, shall be reported as a recruit and shall successfully complete a fire training academy. The academy duration and curricula shall be provided for through the appointing authority. Upon the successful completion of the fire training academy, the appointing authority shall within 15 days notify the civil service board that the employee has commenced the working test period as a probational Firefighter.

ACT 240

SB 29 - Sen. Cortez

and

ACT 243

SB 38 - Sen. Johns

Amends and reenacts R.S. 33:2473(20), 33:2481.4(C)(1), 33:2481.6(C)(1), 33:2490(E) and (F), 33:2491(D) and (H), 33:2491.3(B), 33:2494(C), and 33:2498

Act 240, Lafayette
Effective August 1, 2016

Act 243, Lake Charles
Effective June 29, 2015

Acts 240 and 243 are identical in their language, except, a.) where the name of the city or police department is used, and, b.) Section 2 of each Act provides different

effective dates, as indicated above. The enactment of Acts 240 and 243 alter the manner by which promotions are made in the **police** service of the cities of **Lafayette** and **Lake Charles**, respectively. Currently in the Lake Charles Police Department, (and on August 1, 2016, in the Lafayette Police Department) promotions are based upon seniority accrued in the *next lower class* from which the promotion is to be made. Promotions for all other jurisdictions in the fire and police classified service continue to be based upon *departmental* seniority. Therefore, “seniority” is now defined under **R.S. 33:2473(20)** as “*Departmental Seniority*” and “*Promotional Seniority*.” “*Departmental Seniority*” retains its original definition. However, Acts 240 and 243 provide now for “*Promotional Seniority*,” which means the total cumulative employment in a class of positions of the next lower class from which a promotion is to be made. Employment counted toward seniority in the next lower class shall include the **aggregate** of all temporary appointments, the working test period, and employment as a regular and permanent employee in that lower class, less the aggregate of suspensions without pay while serving in a position of that lower class.

To illustrate, consider that a Police Corporal has served as a substitute Police Sergeant many times during his years of service as a Corporal, and sometimes he served as a provisional Police Sergeant. When he/she passes the promotional Police Lieutenant test, seniority will be counted on the basis of the time served as a regular employee in the class of Police Sergeant, the time served in his/her working test period as Police Sergeant, and the time credited to the employee in temporary appointments to the class of Police Sergeant (substitute, provisional and emergency appointments) in order to determine the Sergeant’s ranking on the promotional list for Police Lieutenant. Of course, any suspensions served as a Police Sergeant would be deducted

from “*Promotional Seniority*,” as it would also be deducted from “*Departmental Seniority*.”

Acts 240 and 243 reiterate the requirement that the appointing authority must maintain accurate records of all appointments and suspensions, and shall report such appointments and suspensions to the board in strict compliance with R.S. 33:2503.

Other provisions of the Fire and Police Civil Service Law for Large Municipalities were amended by Acts 240 and 243, inasmuch as language contained in the previous statutes included only *departmental* seniority. The following were amended accordingly:

R.S. 33:2481.4(C)(1) and **R.S. 33:2491.3.B.** were amended apparently because *departmental* seniority is no longer the only type of seniority that must be considered for certain types of appointment. R.S. 33:2481.4 (C)(1) provides for the creation of the competitive position of Deputy Chief of Police; however, because it is a police classification it was necessary to include both kinds of seniority. Therefore, the amended language provides that any person who is appointed from a position in the classified police service to serve as deputy chief of police shall not forfeit his *departmental or promotional seniority* accumulated to the date of his appointment, and he shall continue to accumulate *departmental or promotional seniority* during the time he holds the position of Deputy Chief of Police.

R.S. 33:2491.3.B was also amended to include the term “*promotional seniority*,” such that neither *departmental seniority* nor *promotional seniority* in the positions with the primary duty or responsibility of police headquarters desk service, jailer, police matron, operations and maintenance of radio, police alarm or signal system, automotive or police apparatus repairs, secretary to the chief, or departmental records clerk shall be

counted by the board for the purpose of ranking names on a promotional employment list for a classified position with the primary duty or responsibility of law enforcement, a position as a chief or assistant chief, or a position as an interdepartmental division, bureau, squad, platoon, or company officer of the police department.

R.S. 33:2481.6 provides for the creation of the competitive position of Chief of Administration of Fire Department. The amended language adds the term “*departmental*” in light of the addition of the new term “*promotional seniority*” in the Fire and Police Civil Service Law for Large Municipalities. It provides in Subsection **C.(1)**: “Any person who is appointed from a position in the classified fire service to serve as chief of administration of fire department shall not forfeit his *departmental* seniority accumulated to the date of his appointment, and he shall continue to accumulate *departmental* seniority during the time he holds the position of chief of administration of fire department.” (Emphasis added.)

R.S. 33:2490.E. and F. provides that any regular employee who resigns or retires from a position in the classified service may, with the prior approval of the board, be reemployed in a position of the class in which he was employed immediately preceding his resignation or retirement or in a position in any lower class. These statutes were amended in light of the addition of the term “*promotional seniority*,” as provided for under Acts 240 and 243.

R.S. 33:2491.D. retains language in Subsection 1 for the placement of names upon the competitive employment lists. However, Subsection D(1) was amended to provide also for Subsection 2. Subsection 1 now provides that, with the exception of how names are placed on promotional lists in Subsection 2, the placement of names upon promotional

lists shall be in descending order of *departmental* seniority. Subsection 2 provides that names placed upon the promotional lists in Lafayette and Lake Charles shall be in descending order according to *promotional* seniority in the next lower class.

R.S. 33:2491.H. now provides for Subsections 1, 2, and 3. In a manner similar to Subsection D(1), Subsection H(1) provides that when new names are to be placed upon the promotional list, the names shall be rearranged in descending order of *departmental* seniority. Under Subsection H(2), when new names are to be placed upon the promotional list in the cities of Lafayette and Lake Charles, the names shall be arranged in descending order according to *promotional* seniority in the next lower class. Also in Lafayette and Lake Charles, if two or more persons possess an equal amount of *promotional* seniority, the names of those persons shall be placed on the promotional list in the order of *departmental* seniority, from highest to lowest. Subsection H(3) continues the provision for placing new names upon a competitive employment list.

R.S. 33:2494(C) provides, notwithstanding any other provision of law to the contrary, that the municipal fire and police civil service system for the city of Lafayette and for the city of Lake Charles shall fill a vacant position in the police department in the following manner: In the event a vacancy cannot be filled by reinstatement, or by reemployment, the board shall next certify the names of the persons upon the promotional list, in the order in which they appear thereon, for the class in which the vacancy is to be filled.

The appointing authority shall select and appoint to the first vacancy to be filled the one person certified to him who has *the greatest promotional seniority* in the next lower rank. Any remaining positions to be

filled in the same class shall be filled by appointing to each such successive vacancy the one of the remaining persons certified therefor who has *the next highest promotional seniority* in the next lower class.

If any one or more persons so certified should refuse the appointment, the appointing authority shall then select and appoint one of the persons certified by the board with the *next highest promotional seniority* in the next lower class. This procedure shall be followed until the position has been filled by appointment of the one person who has the *greatest promotional seniority* in the next lower class, and who is willing to accept the appointment, or until each person whose name appears upon the list, has in this order been certified and offered an appointment to the vacancy.

If two or more persons possess an **equal** amount of *promotional seniority*, those persons shall be reinstated or listed on the promotional list and offered promotions in the order of *departmental seniority*, from highest to lowest.

R.S. 33:2498 provides that in the Lafayette Police Department and the Lake Charles Police Department, whenever an entire class is abolished in the classified service, the regular employees of the class shall be demoted to lower classes and priority to positions shall be governed by *total promotional seniority earned in the class in the order of highest to lowest*. If two or more persons possess an equal amount of promotional seniority, the names of such persons shall be placed on the *promotional list in the order of departmental seniority, from highest to lowest*.

NOTE: Promotional seniority is applicable at this time ONLY to the Lake Charles Police Department. On August 1, 2016, promotional seniority will be applicable also to the Lafayette Police Department.

2015

ACTS

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**THAT IMPACT
GENERAL STATUTES FOR
THE POLICE SERVICE**

Act 86

HB 8 - Rep. Montoucet

***Enacts R.S. 33:423.9.
Effective August 1, 2015***

Act 86 provides that notwithstanding the provisions of R.S. 33:423 or any other provision of law to the contrary, the *Chief of Police in the city of Crowley* is the appointing authority over police personnel. The Chief of Police “shall appoint, discipline, and discharge police personnel subject to the budgetary limitations established by the mayor and board of alderman pertaining to the number of allotted positions for the police department.”

Act 106

HB 267 - Rep. Danahay

***Enacts R.S. 33:2213(P)
Effective August 1, 2015***

Act 106 provides, notwithstanding any other provision of law to the contrary, the city of Sulphur may establish and implement twelve-hour work shift cycles for employees of the Sulphur police department employed in the communications division, jail division, and patrol division. A workday shall consist of a twelve-hour shift on each of the specified days as provided in Paragraph (2) of this Subsection for those employees assigned to such shifts.

According to the provisions of Act 106, during a two-week pay cycle, employees may be divided into four separate work groups. At the start of a two-week pay cycle, two

work groups shall work thirty-six hours the first week and forty-eight hours the second week. During the first week, the employees shall work Sunday, be off Monday and Tuesday, work Wednesday and Thursday, and be off Friday and Saturday. During the second week, they shall be off Sunday, work Monday and Tuesday, be off Wednesday and Thursday, and work Friday and Saturday.

At the start of the same two-week pay cycle, the remaining two work groups shall work forty-eight hours the first week and thirty-six hours the second week. During the first week, the employees shall be off Sunday, work Monday and Tuesday, be off Wednesday and Thursday, and work Friday and Saturday. During the second week the employees shall work Sunday, be off Monday and Tuesday, work Wednesday and Thursday, and be off Friday and Saturday.

The employees in all other divisions of the Sulphur Police Department shall work a forty-hour work week as determined by the chief of police of the department.

Employees provided for in Paragraphs (1) and (2) of this Subsection shall be paid overtime at one and one-half times the usual salary for hours worked during the two-week pay cycle in excess of eighty hours or shall be credited with compensatory time on a one and one-half times basis for all hours in such cycle that exceed eighty hours.

Act 331
HB 392 - Rep. Lopinto

Enacts R.S. 15:1212 and 15:1212.1
Effective August 1, 2015

Act 331 provides in R.S. 15:1212 that within the Louisiana Commission on Law Enforcement and the Administration of Criminal Justice (Commission), there is

created a Louisiana Uniform Law Enforcement Statewide Reporting Database. The Act authorizes the Commission to establish, through electronic data processing and related procedures, a database by which relevant information can be collected, coordinated, analyzed, and made readily available to serve qualified law enforcement agencies concerned with the hiring practices and training of law enforcement officers located anywhere in the state. The Commission shall prescribe the terms and conditions under which such agencies shall contribute or gain access to information contained in the database files and it must also adopt rules, policies and procedures necessary to carry out the provisions of the Act.

R.S. 15:1212.1 provides that all law enforcement agencies, correctional agencies, and institutions shall provide the required data as provided for in R.S. 15:1212(B)(4) in accordance with the rules adopted by the Commission. Upon the request of the Commission, all law enforcement agencies shall provide any other such assistance, information, and data which are reasonable and available to enable the Commission to properly carry out its powers and duties. R.S. 15:1212.1 provides that all law enforcement agencies, correctional agencies, and institutions shall provide the required data in accordance with rules adopted by the Commission.

**2015 ACTS THAT IMPACT
GENERAL STATUTES FOR THE
FIRE SERVICE**

Act 88
HB 50 - Rep. Danahay

Amends and reenacts
R.S. 40:1666.1(A)(3)(c)
Effective June 19, 2015

Act 88 makes a change to an internal statutory reference. The amendment deleted reference to R.S. 33:1667.4 and added R.S. 33:1666.4.

Act 89
HB 63 - Rep. Anders

Enacts R.S. 33:2541.4
Effective June 19, 2015

Act 89 provides that the positions of fire chief and assistant fire chief for Parishwide Fire Protection District No. 1 of the Parish of Tensas are in the *unclassified* service, and the right of selection, appointment, supervision, and discharge for such positions is vested in the governing board of the district.

Act 325
HB 356 - Rep. Plyant

Amends and reenacts R.S. 33:1991(A)(1)
Effective August 1, 2015

Act 325 adds to the definition of the term "fireman" all persons employed or engaged full-time by municipalities or municipal fire departments, parishes or parish fire departments, or fire protection districts as fire records clerk, fire investigation, fire protection, or emergency duties and services, or the fire training officers of such persons. Act 325 excludes from the definition of the term "fireman" emergency medical technicians who work for a public emergency medical services system that is not engaged in traditional firefighting activities.



RECENT
ATTORNEY GENERAL OPINIONS

AFFECTING THE
FIRE AND POLICE SERVICES

The full text of the following opinions may be found on the Attorney General's website:

<http://www.ag.state.la.us/Opinions.aspx>.

A.G. Opinion No. 14-0020
(June 30, 2014)
Public Meetings

A public body must be cognizant of the Establishment Clause of the Constitution if it chooses to address religious matters during a meeting. Further, a board is only required to include information in its written minutes as set out in La. R.S. 42:20(A).

A.G. Opinion No. 14-0117
(September 18, 2014)
Fire Captain Pay

In accordance with La. R.S. 33:1992 (A)(4), Captains of a parish or a fire protection district shall receive a minimum monthly salary of not less than twenty-five percent (25%) above that of a fireman.

A.G. Opinion No. 14-0126
(October 20, 2014)
Elected police chief, Investigations

The Board of Alderman in a Lawrason Act Municipality, and the Municipal Fire and Police Civil Service Board of a small municipality as set forth in La. R.S. 33:2531, et seq., do not have the authority to initiate or conduct an investigation of an elected chief of police.

A.G. Opinion No. 14-0105
(October 20, 2014)
Police Records Clerk, Supplemental Pay

As a classified position under the municipal

fire and police civil service law, the Police Records Clerk is eligible to receive the supplemental monthly compensation mandated in La. R.S. 33:2218.2. However, just as for any other employee qualified to receive the extra compensation provided by the statute, the salary should be paid totally from municipal funds, the supplemental pay is paid out of state funds appropriated for that purpose upon warrant issued by the mayor, and the employee should be employed on a full-time basis.

**A.G. Opinion No. 14-0090
(November 5, 2014)
Audio/Video Recording Devices,
Police Department**

An elected Chief of Police has the legal authority to limit or restrict the general public from bringing audio/video recording devices into the police department, including the lobby or waiting areas. Under the First Amendment, however, the Chief should consider whether safety, security, or privacy concerns warrant the contemplated restrictions on the public's right to gather information on government activities.

**A.G. Opinion No. 14-0140
(November 5, 2014)
Public Meetings**

It is improper for members of a public body to use electronic devices during a public meeting for the express purpose of gathering votes from fellow council members on a matter in which the public body is actively deliberating and voting. Such action would circumvent the application of the Open Meetings Law and therefore violates La. R.S. 42:14(B).

**A.G. Opinion No. 13-0150
(November 14, 2014)
Fireman, Sick Leave**

A fireman, as defined by La. R.S.

33:1991(A)(1), even if employed by a municipality with a population of less than 13,000 is entitled to fifty-two (52) weeks of sick leave as provided by La. R.S. 33:1995.

**A.G. Opinion No. 14-0118
(December 19, 2014)
Entry-level Firemen, Working Test Period**

The term "entry-level firemen" as used in La. R.S. 33:2495 and La. R.S. 33:2555 means a fireman in the lowest level of the classified fire service of the appointing authority. An appointing authority is not required to obtain prior permission of the local civil service board before an "entry level fireman" who has served less than six months of his working test period can be removed or rejected from the working test period and if removed or rejected during the first six months, the employee does not have a right to appeal to the local civil service board.

**A.G. Opinion No. 14-0172
(January 6, 2015)
Open Meetings Law, Agendas**

Generally, a committee agenda item described as "discuss other matters properly brought before this committee" is insufficient to provide public notice of "other matters" which might be decided by the committee. However, it is permissible for a committee of a public body to have such an agenda item to receive facts presented and promote discussion of future topics for deliberation or action by the Council.

**A.G. Opinion No. 14-0211
(March 24, 2015)
Civil Service Boards, Appointments**

The [governing authorities] for the civil service boards created by the fire protection districts in Grand Caillou and Little Caillou should continue efforts to identify candidates for the vacant positions on the boards until such positions are filled.

*Officer I, Police Communications Officer II,
and Chief of Communications.*

**A.G. Opinion No. 14-0163
(March 25, 2015)
Public Records, Electronic Devices**

Addresses various questions which have arisen in response to the receipt of a public records request for documents created or received by elected officials and a member of an advisory board on privately owned electronic devices.

**A.G. Opinion No. 14-0071
(April 13, 2015)
Firefighters, Survivor Benefits**

The presumption of La. R.S. 33:2581 that heart and lung diseases which develop during employment in the classified fire service are caused by the employment is applicable to claims for survivor benefits under La. R.S. 33:1981 and is also applicable to claims for survivor benefits under La. R.S. 33:1981 made by a spouse and/or children of a fireman with five years or more service who was no longer employed or was retired at the time of this death.

**A.G. Opinion No. 14-0061
(May 12, 2015)
Sick Leave, Eligible Classes**

Each employee of the police department is entitled to 52 weeks of sick leave per calendar year, even when the disability is not work related, as long as conditions actually warrant.

Persons filling the following positions in the Bossier City Police Department, who were hired on or after January 1, 1996, do not constitute "employees of the police department" for the purposes of La. R.S. 33:2214(B)(1): Secretary to the Police Chief, Police Departmental Records Clerk, Public Information Officer, Police Communications

**A.G. Opinion No. 14-0102
(May 5, 2015)
Elected Police Chief, Authority**

The City of Youngsville cannot require an elected Chief of Police or any of his police officers to be present for the removal of a political sign from private property. The allocation of police resources is exclusively within the Chief's authority.

**A.G. Opinion No. 15-0019
(June 22, 2015)
Civil Service Boards, Legal Counsel**

Series of questions concerning civil service boards authority to hire independent legal counsel.

**A.G. Opinion No. 15-0048
(June 16, 2015)
On-call employees,
Prohibited Donation of Public Funds**

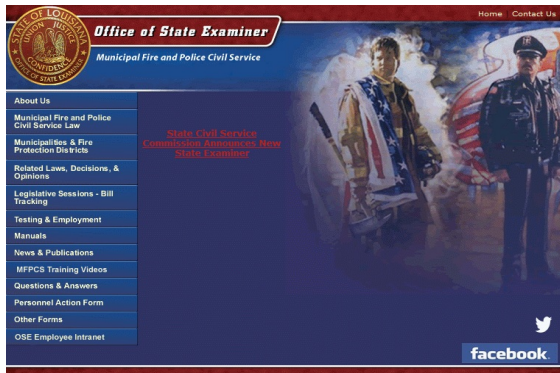
The City of Denham Springs is permitted to pay its on-call employees for their on-call time, regardless of whether they are actually called out for work, provided that the conditions are sufficiently restrictive such that the employees cannot effectively use the time for personal purposes. On the contrary, if the on-call time is not compensable because the employees are able to use the on-call time for personal purposes, such payments will be unlawful as they constitute a prohibited donation of public funds. Further, once the City's employees have exceeded 40 hours per week, both on-call and call in work should be paid at an overtime rate.



The summaries of the Acts of the 2015 Regular Session of the Louisiana State Legislature which are included within this General Circular are offered for informational purposes only. These comments shall not be considered to be a legal interpretation of the law. They represent only that which is reasonably understood by those who are not trained in the legal profession. No part of this communication shall be construed as legal advice. The reader is encouraged to consult an attorney for specific legal questions or opinions related to the legislation and Attorney General Opinions herein presented.

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