

By: Bailey

H.B. No. 3586

A BILL TO BE ENTITLED

AN ACT

relating to the sheriff's department civil service system in certain counties; imposing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 158.034, Local Government Code, is amended by amending Subsections (a) and (c) and adding Subsections (a-1) and (a-2) to read as follows:

(a) In a county with a population of less than 2.8 million other than a county to which Subsection (a-1) applies, if a majority of the employees voting at the election approve the creation of a sheriff's department civil service system, the sheriff, commissioners court, and district attorney shall each appoint one person to serve as a member of the civil service commission that administers the system.

(a-1) In a county with a population of one million or more that adopted Chapter 174 after January 1, 2004, the employee organization representing the majority of sheriff department employees shall appoint two persons to serve as members of the civil service commission that administers the system in addition to the appointments by the sheriff, commissioners court, and district attorney.

(a-2) In a county with a population of 2.8 million or more other than a county to which Subsection (a-1) applies, if a majority of the employees voting at the election approve the creation of a

1 sheriff's department civil service system, the sheriff,  
2 commissioners court, ~~[and]~~ district attorney, and employee  
3 organization representing the majority of employees shall each  
4 appoint two persons to serve as members of the civil service  
5 commission that administers the system, and the ~~[three]~~ appointing  
6 authorities shall appoint one member by joint action requiring the  
7 affirmative vote of each of the authorities.

8 (c) Each member of the commission is appointed for a term of  
9 two years. Each member shall serve not more than two terms.  
10 However, the initial members of the commission in a county with a  
11 population of less than 2.8 million that is covered by Subsection  
12 (a) shall determine by lot which two of them will serve a term of two  
13 years and which one of them will serve a term of one year. In a  
14 county with a population of 2.8 million or more:

15 (1) the initial member appointed jointly under  
16 Subsection (a) serves a term of two years; and

17 (2) the initial members appointed by each individual  
18 appointing authority shall determine by lot which one of the two  
19 initial members appointed by the appointing authority will serve a  
20 term of two years and which initial member appointed by that  
21 authority will serve a term of one year.

22 SECTION 2. Chapter 158, Local Government Code, is amended  
23 by adding Subchapter C to read as follows:

24 SUBCHAPTER C. SHERIFF'S DEPARTMENT CIVIL SERVICE SYSTEM IN CERTAIN  
25 COUNTIES WITH POPULATION OF ONE MILLION OR MORE

26 Sec. 158.051. APPLICABILITY. (a) This subchapter applies  
27 only to a county:

1           (1) with a population of one million or more that  
2 adopted Chapter 174 after January 1, 2004; or

3           (2) with a population of 2.8 million or more.

4           (b) The definitions assigned by Subchapter B apply to this  
5 subchapter.

6           Sec. 158.052. REMOVAL OF COMMISSION MEMBER. (a) If at a  
7 meeting held for that purpose the commissioners court of the county  
8 finds that a commission member is guilty of misconduct in office,  
9 the commissioners court may remove the member. The member may  
10 request that the meeting be held as an open hearing in accordance  
11 with Chapter 551, Government Code.

12           (b) If a commission member is indicted or charged by  
13 information with a criminal offense involving moral turpitude, the  
14 member shall be automatically suspended from office until the  
15 disposition of the charge. Unless the member pleads guilty or is  
16 found to be guilty, the member shall resume office at the time of  
17 disposition of the charge.

18           (c) The initial appointing authority under Section 158.034  
19 may appoint a substitute commission member during a period of  
20 suspension. If a member pleads guilty to or is found to be guilty of  
21 a criminal offense involving moral turpitude, the governing body  
22 shall appoint a replacement commission member to serve the  
23 remainder of the disqualified member's term of office.

24           Sec. 158.053. INTERNAL INVESTIGATION. (a) In this  
25 section:

26           (1) "Complainant" means a person claiming to be the  
27 victim of misconduct by an employee.

1           (2) "Investigation" means an administrative  
2 investigation, conducted by the sheriff's department, of alleged  
3 misconduct by an employee that could result in punitive action  
4 against that person.

5           (3) "Investigator" means an agent or employee of the  
6 sheriff's department who is assigned to conduct an investigation.

7           (4) "Normally assigned working hours" includes those  
8 hours during which an employee is actually at work or at the  
9 person's assigned place of work, but does not include any time when  
10 the person is off duty on authorized leave, including sick leave.

11           (5) "Punitive action" means a disciplinary  
12 suspension, termination, indefinite suspension, demotion in rank,  
13 reprimand, or any combination of those actions.

14           (b) An investigator may interrogate an employee who is the  
15 subject of an investigation only during the employee's normally  
16 assigned working hours unless:

17           (1) the seriousness of the investigation, as  
18 determined by the employee's department head or the department  
19 head's designee, requires interrogation at another time; and

20           (2) the employee is compensated for the interrogation  
21 time on an overtime basis.

22           (c) The department head may not consider work time missed  
23 from regular duties by an employee due to participation in the  
24 conduct of an investigation in determining whether to impose a  
25 punitive action or in determining the severity of a punitive  
26 action.

27           (d) An investigator may not interrogate an employee who is

1 the subject of an investigation or conduct any part of the  
2 investigation at that person's home without that person's  
3 permission.

4 (e) A person may not be assigned to conduct an investigation  
5 if the person is the complainant, the ultimate decision-maker  
6 regarding disciplinary action, or a person who has any personal  
7 involvement regarding the alleged misconduct. An employee who is  
8 the subject of an investigation has the right to inquire and, on  
9 inquiry, to be informed of the identities of each investigator  
10 participating in an interrogation of the employee.

11 (f) Before an investigator may interrogate an employee who  
12 is the subject of an investigation, the investigator must inform  
13 the employee in writing of the nature of the investigation and the  
14 name of each person who complained about the employee concerning  
15 the matters under investigation. An investigator may not  
16 interrogate an employee based on a complaint by a complainant who  
17 is not a peace officer unless the complainant verifies the  
18 complaint in writing before a public officer who is authorized by  
19 law to take statements under oath. In an investigation authorized  
20 under this subsection, an investigator may interrogate an employee  
21 about events or conduct reported by a witness who is not a  
22 complainant without disclosing the name of the witness. Not later  
23 than the 48th hour before the hour on which an investigator begins  
24 to interrogate an employee regarding an allegation based on a  
25 complaint, affidavit, or statement, the investigator shall give the  
26 employee a copy of the affidavit, complaint, or statement. An  
27 interrogation may be based on a complaint from an anonymous

1 complainant if the departmental employee receiving the anonymous  
2 complaint certifies in writing, under oath, that the complaint was  
3 anonymous. This subsection does not apply to an on-the-scene  
4 investigation that occurs immediately after an incident being  
5 investigated if the limitations of this subsection would  
6 unreasonably hinder the essential purpose of the investigation or  
7 interrogation. If the limitation would hinder the investigation or  
8 interrogation, the employee under investigation must be furnished,  
9 as soon as practicable, a written statement of the nature of the  
10 investigation, the name of each complaining party, and the  
11 complaint, affidavit, or statement.

12 (g) An interrogation session of an employee who is the  
13 subject of an investigation may not be unreasonably long. In  
14 determining reasonableness, the gravity and complexity of the  
15 investigation must be considered. The investigators shall allow  
16 reasonable interruptions to permit the employee to attend to  
17 personal physical necessities.

18 (h) In an investigation or interrogation conducted under  
19 this section in which an employee is to be interviewed concerning an  
20 alleged act which, if proven, may result in any punitive action, the  
21 employee under investigation shall be afforded a reasonable  
22 opportunity and facilities to contact and consult privately with an  
23 attorney or a representative from the employee organization  
24 representing the majority of sheriff department employees before  
25 being interviewed. The attorney or representative may be present  
26 during the interview. An attorney or representative may not be a  
27 person who is related to the respondent, within the third degree by

1 consanguinity or the second degree by affinity, or an employee  
2 involved in the incident being investigated. At any time during the  
3 interview the employee under investigation may request to consult  
4 with the attorney or representative in private before continuing  
5 the interview.

6 (i) An investigator may not threaten an employee who is the  
7 subject of an investigation with punitive action during an  
8 interrogation. However, an investigator may inform an employee  
9 that failure to truthfully answer reasonable questions directly  
10 related to the investigation or to fully cooperate in the conduct of  
11 the investigation may result in punitive action.

12 (j) If prior notification of intent to record an  
13 interrogation is given to the other party, either the investigator  
14 or the employee who is the subject of an interrogation may record  
15 the interrogation. The employee is entitled to a copy of the  
16 recording of an interrogation described by this subsection at the  
17 employee's expense.

18 (k) If an investigation does not result in punitive action  
19 against an employee but does result in a written reprimand or an  
20 adverse finding or determination regarding that person, the  
21 reprimand, finding, or determination may not be placed in that  
22 person's personnel file unless the employee is first given an  
23 opportunity to read and sign the document. If the employee refuses  
24 to sign the reprimand, finding, or determination, it may be placed  
25 in the personnel file with a notation that the person refused to  
26 sign it. An employee may respond in writing to a reprimand,  
27 finding, or determination that is placed in the person's personnel

file under this subsection by submitting a written response to the department head not later than the 10th day after the date the employee is asked to sign the document. The response shall be placed in the personnel file. An employee who receives a punitive action and who elects not to appeal the action may file a written response as prescribed by this subsection not later than the 10th day after the date the person is given written notice of the punitive action from the department head.

(1) If the department head or an investigator violates a provision of this section while conducting an investigation, the sheriff's department shall reverse any punitive action taken pursuant to the investigation and reverse any reprimand, and any information obtained during the investigation shall be specifically excluded from introduction into evidence in any proceeding against the employee.

Sec. 158.054. HEARING EXAMINERS. (a) A written notice for a promotional bypass or the letter of disciplinary action, as applicable, issued to an employee must state that in an appeal of an indefinite suspension, a suspension, a promotional bypass, or a recommended demotion, the appealing employee may elect to appeal to an independent third-party hearing examiner instead of to the commission. The letter must also state that if the employee elects to appeal to a hearing examiner, the person waives all rights to appeal to a district court except as provided by Subsection (j).

(b) To exercise the choice of appealing to a hearing examiner, the appealing employee must submit to the sheriff or the sheriff's designee a written request as part of the original notice



1 of appeal required under this chapter stating the person's decision  
2 to appeal to an independent third-party hearing examiner.

3 (c) The hearing examiner's decision is final and binding on  
4 all parties. If the employee decides to appeal to an independent  
5 third-party hearing examiner, the person automatically waives all  
6 rights to appeal to a district court except as provided by  
7 Subsection (j).

8 (d) If the appealing employee chooses to appeal to a hearing  
9 examiner, the employee and the sheriff or the sheriff's designee  
10 shall first attempt to agree on the selection of an impartial  
11 hearing examiner. If the parties do not agree on the selection of a  
12 hearing examiner within 10 days after the date the appeal is filed,  
13 the sheriff shall immediately request a list of seven qualified  
14 neutral arbitrators from the American Arbitration Association or  
15 the Federal Mediation and Conciliation Service, or their successors  
16 in function. The employee and the sheriff or the sheriff's designee  
17 may agree on one of the seven neutral arbitrators on the list. If  
18 they do not agree within five working days after the date they  
19 received the list, each party or the party's designee shall  
20 alternate striking a name from the list and the name remaining is  
21 the hearing examiner. The parties or their designees shall agree on  
22 a date for the hearing.

23 (e) The appeal hearing shall begin as soon as the hearing  
24 examiner can be scheduled. If the hearing examiner cannot begin the  
25 hearing within 45 calendar days after the date of selection, the  
26 employee may, within two days after learning of that fact, call for  
27 the selection of a new hearing examiner using the procedure

1 prescribed by Subsection (d).

2 (f) In each hearing conducted under this section, the  
3 hearing examiner has the same duties and powers as the commission,  
4 including the right to issue subpoenas.

5 (g) In a hearing conducted under this section, the parties  
6 may agree to an expedited hearing procedure. Unless otherwise  
7 agreed by the parties, in an expedited procedure the hearing  
8 examiner shall render a decision on the appeal within 10 days after  
9 the date the hearing ended.

10 (h) In an appeal that does not involve an expedited hearing  
11 procedure, the hearing examiner shall make a reasonable effort to  
12 render a decision on the appeal within 30 days after the date the  
13 hearing ends or the briefs are filed. The hearing examiner's  
14 inability to meet the time requirements imposed by this section  
15 does not affect the hearing examiner's jurisdiction, the validity  
16 of the disciplinary action, or the hearing examiner's final  
17 decision.

18 (i) The hearing examiner's fees and expenses are shared  
19 equally by the appealing employee and by the department. The costs  
20 of a witness are paid by the party who calls the witness.

21 (j) A district court may hear an appeal of a hearing  
22 examiner's award only on the grounds that the hearing examiner was  
23 without jurisdiction or exceeded the hearing examiner's  
24 jurisdiction or that the order was procured by fraud, collusion, or  
25 other unlawful means. An appeal must be brought in the district  
26 court having jurisdiction in the county in which the sheriff's  
27 department is located.

Sec. 158.055. COMMISSION INVESTIGATIONS AND INSPECTIONS.

(a) The commission or a commission member designated by the commission may investigate and report on all matters relating to the enforcement and effect of this subchapter and any rules adopted under this subchapter and shall determine if the subchapter and rules are being obeyed.

(b) During an investigation, the commission or the commission member may:

(1) administer oaths;

(2) issue subpoenas to compel the attendance of witnesses and the production of books, papers, documents, and accounts relating to the investigation; and

(3) authorize the deposition of witnesses residing inside or outside the state.

(c) A deposition taken in connection with an investigation under this section must be taken in the manner prescribed by law for taking a similar deposition in a civil action in federal district court.

(d) An oath administered or a subpoena issued under this section has the same force and effect as an oath administered by a magistrate in the magistrate's judicial capacity.

(e) All subpoenaed witnesses shall appear before the commission and provide testimony. The commission may not refuse to hear the testimony of a witness once the subpoena has been issued.

(f) A person who fails to respond to a subpoena issued under this section commits an offense punishable as prescribed by Section 158.056(b).

Sec. 158.056. CRIMINAL PENALTY FOR VIOLATION OF SUBCHAPTER.

(a) An employee commits an offense if the person violates this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,000, confinement in the county jail for not more than 30 days, or both.

Sec. 158.057. REINSTATEMENT. (a) If the commission, a hearing examiner, or a district court orders that an employee terminated or suspended without pay be reinstated, the county shall, before the end of the second full pay period after the date the person is reinstated, repay to the person all wages lost as a result of the suspension.

(b) If the county does not fully repay all lost wages to the sheriff's employee as provided by this section, the county shall pay the person an amount equal to the lost wages plus accrued interest.

(c) Interest under Subsection (b) accrues beginning on the date of the sheriff's employee reinstatement at a rate equal to three percent plus the rate for court judgments under Chapter 304, Finance Code, that is in effect on the date of the person's reinstatement.

(d) An employer who intentionally refuses for at least 10 days to obey a commission order to reinstate a terminated, suspended, or indefinitely suspended employee commits an offense punishable under Section 158.056(b).

Sec. 158.058. DECISIONS AND RECORDS. (a) Each commission member shall vote and sign a decision issued by the commission.

1       (b) The commission shall keep records of each hearing or  
2 case that comes before the commission and copies of the records  
3 shall be provided to the employee on request.

4       (c) Each rule, opinion, directive, decision, or order  
5 issued by the commission must be written and constitutes a public  
6 record that the commission shall retain on file.

7       Sec. 158.059. LEGISLATIVE LEAVE. (a) An employee is  
8 entitled to legislative leave without pay to appear before or to  
9 petition a governmental body during a regular or special session of  
10 that body as prescribed by this section.

11       (b) To be eligible for legislative leave, an employee must  
12 submit a written application to the county on or before the 30th day  
13 before the date the employee intends to begin the legislative  
14 leave. The application must indicate the length of the requested  
15 leave and state that the employee is willing to reimburse the county  
16 for any wages, pension, or other costs the county will incur as a  
17 result of the leave. The length of the requested leave may not  
18 exceed the length of the session.

19       (c) Within 30 days after the date the county receives the  
20 application, the county shall notify the employee in writing of the  
21 actual amount of money required to offset the costs the county will  
22 incur. The county may require the employee to post the money before  
23 granting the leave.

24       (d) The county shall grant legislative leave to an employee  
25 who submits an application as prescribed by this section and who  
26 complies with any requirement relating to payment of costs unless  
27 an emergency exists or unless granting the leave will result in an

1 insufficient number of employees to carry out the normal functions  
2 of the sheriff's department.

3 (e) If the county sheriff determines that granting a  
4 legislative leave will result in an insufficient number of  
5 employees to carry out the normal functions of the department,  
6 another employee may volunteer to work in the applicant's place on  
7 an exchange of time basis as long as no overtime results. If an  
8 employee volunteers to work in the applicant's place and no  
9 overtime will result, the sheriff shall allow the volunteer to work  
10 in the applicant's place. If the volunteer work will solve the  
11 problem of having an insufficient number of employees, the county  
12 shall grant the legislative leave.

13 (f) Legislative leave is not a break in service for any  
14 purpose, including the determination of seniority, promotions,  
15 sick leave, vacations, or retirement.

16 (g) Legislative leave granted under this section to an  
17 employee to attend a session of the Congress of the United States  
18 shall be granted for a period not to exceed 30 percent of the  
19 applicant's total annual working days during each year in which  
20 leave is requested.

21 Sec. 158.060. LEGISLATIVE LEAVE ACCOUNT. (a) An employee  
22 may donate not more than one hour for each month of accumulated  
23 vacation or compensatory time to an employee organization. The  
24 county shall establish and maintain a legislative leave time  
25 account for the employee organization representing the majority of  
26 employees in the sheriff's department.

27 (b) The employee must authorize the donation in writing on a

1 form provided by the employee organization and approved by the  
2 county. After receiving the signed authorization on an approved  
3 form, the county shall transfer donated time to the account monthly  
4 until the county receives the employee's written revocation of the  
5 authorization.

6 (c) Only an employee who is a member of the employee  
7 organization described by Subsection (a) may use for legislative  
8 leave purposes the time donated to that employee organization. An  
9 employee may use for legislative leave purposes the time donated  
10 under this section in lieu of reimbursing the county under Section  
11 158.059.

12 (d) A request to use for legislative leave purposes the time  
13 in an employee organization's time account must be in writing and  
14 submitted to the county by the president or the equivalent officer  
15 of the employee organization or by that officer's designee.

16 (e) The county shall account for the time donated to the  
17 account and used from the account. The county may:

18 (1) determine and credit the actual cash value of the  
19 donated time in the account and determine and deduct the actual cash  
20 value of time used from the account for legislative leave purposes;  
21 or

22 (2) credit and debit an account on an hour-for-hour  
23 basis regardless of the cash value of the time donated or used.

24 (f) An employee organization may not use for legislative  
25 leave purposes more than 4,000 hours from its time account under  
26 this section in a calendar year. This section does not prevent an  
27 employee organization from accumulating more than 4,000 hours. This

1 section only limits the total number of donated hours that an  
2 employee organization may use in any calendar year.

3 Sec. 158.061. APPEAL TO DISTRICT COURT. Each appeal to a  
4 district court under this subchapter shall be advanced on the  
5 district court docket and given a preference setting over all other  
6 cases.

7 Sec. 158.062. SPECIAL COUNSEL. A civil service commission  
8 shall retain special counsel for the purpose of advising or  
9 representing the commission as determined by the commission. The  
10 commissioners court shall include in the annual county budget a  
11 reasonable amount of funding, on the request of the civil service  
12 commission, to employ special counsel. The employment is for the  
13 time and on the terms that the commission considers necessary.

14 SECTION 3. Sections 158.035(c) and 158.0351, Local  
15 Government Code, are repealed.

16 SECTION 4. This Act takes effect September 1, 2007.