

By: Jackson

H.B. No. 3781

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a sheriff's department civil service system in certain counties.

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

SECTION 1. Section 158.032, Local Government Code, is amended to read as follows:

Sec. 158.032. ELIGIBLE DEPARTMENTS. (a) Except as provided by Subsection (b), a [A-sheriff's] department in a county with a population of more than 200,000 [500,000] may, in accordance with this subchapter, create a civil service system.

(b) This subchapter does not apply to a county with a population of 500,000 or less in which, under a law other than this chapter, a collective bargaining agreement or a meet-and-confer agreement that provides sheriff's department employees benefits or rights similar to those provided under this subchapter is in effect before September 1, 2007.

(c) The population of a county under this subchapter is determined by the:

(1) most recent:

(A) federal decennial census; or

(B) population estimate provided by the state demographer under Chapter 468, Government Code, if that estimate is more recent than the most recent federal decennial census.

(d) The application of this subchapter to the county is not

1 affected if the county's population changes and the county no
2 longer meets the population requirement of Subsection (a).

3 SECTION 2. The heading to Section 158.033, Local Government
4 Code, is amended to read as follows:

5 Sec. 158.033. PETITION AND ELECTION IN COUNTY WITH
6 POPULATION MORE THAN 500,000.

7 SECTION 3. Section 158.033(a), Local Government Code, is
8 amended to read as follows:

9 (a) If, in a county with a population of more than 500,000,
10 at least 20 percent of the employees of an eligible department under
11 this subchapter sign a petition requesting an election under this
12 section and present the petition to the county judge of the
13 employing county, the judge shall order a departmental election on
14 the question of the creation of a sheriff's department civil
15 service system.

16 SECTION 4. Subchapter B, Chapter 158, Local Government
17 Code, is amended by adding Section 158.0335 to read as follows:

18 Sec. 158.0335. CREATION OF SYSTEM IN COUNTY WITH POPULATION
19 OF 500,000 OR LESS. (a) The commissioners court of a county with a
20 population of 200,000 or more but less than 500,000 may create a
21 sheriff's department civil service system under this section.

22 (b) A sheriff's department civil service system may be
23 created under this section by an order adopted in accordance with
24 Section 158.003 or by an election called and held in accordance with
25 Section 158.004.

26 (c) The commissioners court of a county that receives a
27 petition signed by a majority of the employees of an eligible

1 department under this section requesting the creation of a
2 sheriff's department civil service system shall by order:

3 (1) create a sheriff's department civil service system
4 in accordance with Section 158.003; or

5 (2) call an election on the question of the creation of
6 a civil service system in accordance with Section 158.004.

7 (d) In an election held under this section, the
8 commissioners court shall order the ballot to be printed to provide
9 for voting for or against the proposition: "Creation of a civil
10 service system for the sheriff's department of the county."

11 SECTION 5. Section 158.035(b), Local Government Code, is
12 amended to read as follows:

13 (b) The commission may adopt or use as a guide any civil
14 service law or rule of the United States, this state, or a political
15 subdivision in this state to the extent that the law or rule
16 promotes the purposes of this subchapter and is consistent with the
17 needs and circumstances of the department, provided that the
18 commission must allow a commissioned peace officer who is licensed
19 under Chapter 1701, Occupations Code, and is employed by the
20 department to appeal an indefinite suspension, a suspension of no
21 less than three days, a promotional bypass, or a recommended
22 demotion as provided by Section 158.037(d).

23 SECTION 6. Section 158.037, Local Government Code, is
24 amended by adding Subsection (d) to read as follows:

25 (d) Notwithstanding any other provision of this subchapter,
26 a commissioned peace officer who is licensed under Chapter 1701,
27 Occupations Code, and is employed by a department under this

1 subchapter may appeal an indefinite suspension, a suspension of no
2 less than three days, a promotional bypass, or a recommended
3 demotion to an independent third party hearing examiner as
4 described by Section 158.0372 in lieu of appealing the action to the
5 commission.

6 SECTION 7. Section 158.0371, Local Government Code, is
7 amended to read as follows:

8 Sec. 158.0371. REVIEW UNDER SUBSTANTIAL EVIDENCE RULE. (a)
9 The same standards described by Section 158.0121 apply to an appeal
10 of a commission decision under Section 158.037.

11 (b) The procedures for review of a commission decision under
12 Section 158.037 are the same as provided by Section 158.0122.

13 (c) The commission may require a party who appeals a
14 decision of the commission under Section 158.037 to pay the cost of
15 preparing the commission record in the same manner provided by
16 Section 158.0123.

17 SECTION 8. Subchapter B, Chapter 158, Local Government
18 Code, is amended by adding Sections 158.0372 and 158.041 to read as
19 follows:

20 Sec. 158.0372. APPEAL TO HEARING EXAMINERS. (a) This
21 section does not apply to an employee of a department under this
22 subchapter holding an exempt position described by Section
23 158.038(b) or (c).

24 (b) In order to appeal an indefinite suspension, a
25 suspension of no less than three days, a promotional bypass, or a
26 recommended demotion to an independent third party hearing
27 examiner, the appealing employee must submit to the chairman of the

1 commission a written request of appeal stating the employee's
2 decision 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 an employee of a department under this subchapter
5 appeals to a hearing examiner, the employee waives all rights to
6 appeal to a district court except as provided by Subsection (j).

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

22 (e) The appeal hearing must be held on the earliest agreed
23 date on which the hearing examiner can be scheduled. If the hearing
24 examiner cannot schedule the hearing within 45 calendar days after
25 the date of the examiner's selection, the employee may, within two
26 days after learning that fact, call for the selection of a new
27 hearing examiner using the procedure prescribed by Subsection (d).

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

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

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

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

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

27 SECTION 9. Section 158.0025, Local Government Code, is

1 repealed.

2 SECTION 10. A sheriff's department civil service system
3 created under Section 158.0025, Local Government Code, before the
4 effective date of this Act is:

5 (1) not affected by the repeal of that section by this
6 Act; and

7 (2) considered a civil service system created under
8 Subchapter B, Chapter 158, Local Government Code, as amended by
9 this Act, as of the effective date of this Act.

10 SECTION 11. This Act takes effect September 1, 2007.