

BILL ANALYSIS

H.B. 2931
By: Vaught
County Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Sheriff's deputies currently serving in counties that have adopted a sheriff's department civil service system under Subchapter A or B, Chapter 158, Local Government Code, have lost faith in the disciplinary appeals process that permits only an appeal to the local civil service commission. Deputies worry that disciplinary decisions made by the commission might be biased toward protecting the county because commissioners are appointed by top county officials.

H.B. 2931 provides a deputy sheriff in certain counties the opportunity to appeal certain demotions or disciplinary actions to an independent hearing examiner. The bill provides that if the deputy sheriff appeals to an independent hearing examiner the deputy waives any right to appeal to a district court with certain exceptions.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2931 amends the Local Government Code to establish that, in addition to any other notice requirements prescribed by or under provisions for a county civil service system in a county with a population of 190,000 or more or by or under provisions for a sheriff's department civil service system in a county with a population of more than 500,000, respectively, the written notice for a demotion or notice of disciplinary action, as applicable, issued to a deputy sheriff must state that, in an appeal of a termination or indefinite suspension, a suspension of not less than three days, or a recommended demotion, the appealing deputy sheriff is authorized to elect to appeal to an independent third-party hearing examiner instead of to a county civil service commission or a sheriff's department civil service commission, respectively. The bill also requires that the letter state that if the deputy sheriff elects to appeal to a hearing examiner, the person waives all rights to appeal to a district court except as otherwise provided by the bill. The bill provides that failure to provide such notice does not affect a deputy sheriff's right to elect to appeal to an independent third-party hearing examiner.

H.B. 2931 requires the appealing deputy sheriff, to exercise the choice of appealing to a hearing examiner, to submit to the respective commission a written request as part of any required original notice of appeal stating the person's decision to appeal to an independent third-party hearing examiner. The bill establishes that the hearing examiner's decision is final and binding on all parties, and that if the deputy sheriff decides to appeal to an independent third-party hearing examiner, the person waives all rights to appeal to a district court, except as otherwise provided by the bill.

H.B. 2931 requires the deputy sheriff and the sheriff, or their designees, to first attempt to agree on the selection of an impartial hearing examiner, if the deputy sheriff chooses to appeal to a

hearing examiner. The bill requires the respective commission, if the parties do not agree on the selection of a hearing examiner on or within 10 days after the date the appeal is filed, to immediately request a list of seven qualified neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service, or their successors in function. The bill authorizes the deputy sheriff and the sheriff, or their designees, to agree on one of the seven neutral arbitrators on the list, and if they do not agree within five working days after the date they received the list, each party or the party's designee is required to alternate striking a name from the list and the name remaining is the hearing examiner. The bill requires the parties or their designees to agree on a date for the hearing.

H.B. 2931 requires the appeal hearing to begin as soon as the hearing examiner can be scheduled, and, if the hearing examiner cannot begin the hearing within 45 calendar days after the date of selection, authorizes the deputy sheriff, within two days after learning of that fact, to call for the selection of a new hearing examiner using the procedure described above. The bill establishes that in each hearing, the hearing examiner has the same duties and powers as the respective commission, including any right to issue subpoenas. The bill authorizes the parties to agree to an expedited hearing procedure and requires the hearing examiner, in an expedited procedure, to render a decision on the appeal within 10 days after the date the hearing ended, unless otherwise agreed by the parties.

H.B. 2931 requires the hearing examiner, in an appeal that does not involve an expedited hearing procedure, to make a reasonable effort to render a decision on the appeal within 30 days after the date the hearing ends or the briefs are filed. The bill specifies that the hearing examiner's inability to meet these time requirements does not affect the hearing examiner's jurisdiction, the validity of the disciplinary action, or the hearing examiner's final decision. The bill establishes that the party who loses the appeal is liable for the hearing examiner's fees and expenses, and that the costs of a witness are paid by the party who calls the witness. The bill authorizes a district court to hear an appeal of a hearing examiner's award only on the grounds that the hearing examiner was without jurisdiction or exceeded the hearing examiner's jurisdiction or that the order was procured by fraud, collusion, or other unlawful means. The bill requires an appeal to be brought in the district court having jurisdiction in the county in which the respective department is located.

EFFECTIVE DATE

September 1, 2009.