

By: Vaught

H.B. No. 2931

A BILL TO BE ENTITLED

AN ACT

relating to an appeal by a deputy sheriff under county civil service to an independent third-party hearing examiner.

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

SECTION 1. Subchapter A, Chapter 158, Local Government Code, is amended by adding Section 158.0125 to read as follows:

Sec. 158.0125. APPEAL TO HEARING EXAMINER BY DEPUTY SHERIFF. (a) In addition to any other notice requirements prescribed by or under this subchapter, 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 may elect to appeal to an independent third-party hearing examiner instead of to the commission. The letter must also 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 provided by Subsection (j). Failure to provide notice under this subsection does not affect a deputy sheriff's right to elect to appeal to an independent third-party hearing examiner under this section.

(b) To exercise the choice of appealing to a hearing examiner, the appealing deputy sheriff must submit to the commission a written request as part of any original notice of appeal required under this subchapter stating the person's decision

1 to appeal to an independent third-party hearing examiner.

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

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

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

1       (f) In each hearing conducted under this section, the  
2 hearing examiner has the same duties and powers as the commission,  
3 including any 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 disciplinary action, or the hearing examiner's final  
16 decision.

17       (i) The party who loses the appeal is liable for the hearing  
18 examiner's fees and expenses. The costs of a witness are paid by  
19 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 hearing examiner's  
23 jurisdiction or that the order was procured by fraud, collusion, or  
24 other unlawful means. An appeal must be brought in the district  
25 court having jurisdiction in the county in which the department is  
26 located.

27       SECTION 2. Subchapter B, Chapter 158, Local Government

1 Code, is amended by adding Section 158.0375 to read as follows:

2 Sec. 158.0375. APPEAL TO HEARING EXAMINER BY DEPUTY  
3 SHERIFF. (a) In addition to any other notice requirements  
4 prescribed by or under this subchapter, the written notice for a  
5 demotion or notice of disciplinary action, as applicable, issued to  
6 a deputy sheriff must state that in an appeal of a termination or  
7 indefinite suspension, a suspension of no less than three days, or a  
8 recommended demotion, the appealing deputy sheriff may elect to  
9 appeal to an independent third-party hearing examiner instead of to  
10 the commission. The letter must also state that if the deputy  
11 sheriff elects to appeal to a hearing examiner, the person waives  
12 all rights to appeal to a district court except as provided by  
13 Subsection (j). Failure to provide notice under this subsection  
14 does not affect a deputy sheriff's right to elect to appeal to an  
15 independent third-party hearing examiner under this section.

16 (b) To exercise the choice of appealing to a hearing  
17 examiner, the appealing deputy sheriff must submit to the  
18 commission a written request as part of any original notice of  
19 appeal required under this subchapter stating the person's decision  
20 to appeal to an independent third-party hearing examiner.

21 (c) The hearing examiner's decision is final and binding on  
22 all parties. If the deputy sheriff decides to appeal to an  
23 independent third-party hearing examiner, the person waives all  
24 rights to appeal to a district court except as provided by  
25 Subsection (j).

26 (d) If the deputy sheriff chooses to appeal to a hearing  
27 examiner, the deputy sheriff and the sheriff, or their designees,

1 shall first attempt to agree on the selection of an impartial  
2 hearing examiner. If the parties do not agree on the selection of a  
3 hearing examiner on or within 10 days after the date the appeal is  
4 filed, the commission shall immediately request a list of seven  
5 qualified neutral arbitrators from the American Arbitration  
6 Association or the Federal Mediation and Conciliation Service, or  
7 their successors in function. The deputy sheriff and the sheriff,  
8 or their designees, may agree on one of the seven neutral  
9 arbitrators on the list. If they do not agree within five working  
10 days after the date they received the list, each party or the  
11 party's designee shall alternate striking a name from the list and  
12 the name remaining is the hearing examiner. The parties or their  
13 designees shall agree on a date for the hearing.

14 (e) The appeal hearing shall begin as soon as the hearing  
15 examiner can be scheduled. If the hearing examiner cannot begin the  
16 hearing within 45 calendar days after the date of selection, the  
17 deputy sheriff may, within two days after learning of that fact,  
18 call for the selection of a new hearing examiner using the procedure  
19 prescribed by Subsection (d).

20 (f) In each hearing conducted under this section, the  
21 hearing examiner has the same duties and powers as the commission,  
22 including any right to issue subpoenas.

23 (g) In a hearing conducted under this section, the parties  
24 may agree to an expedited hearing procedure. Unless otherwise  
25 agreed by the parties, in an expedited procedure the hearing  
26 examiner shall render a decision on the appeal within 10 days after  
27 the date the hearing ended.

1       (h) In an appeal that does not involve an expedited hearing  
2 procedure, the hearing examiner shall make a reasonable effort to  
3 render a decision on the appeal within 30 days after the date the  
4 hearing ends or the briefs are filed. The hearing examiner's  
5 inability to meet the time requirements imposed by this section  
6 does not affect the hearing examiner's jurisdiction, the validity  
7 of the disciplinary action, or the hearing examiner's final  
8 decision.

9       (i) The party who loses the appeal is liable for the hearing  
10 examiner's fees and expenses. The costs of a witness are paid by  
11 the party who calls the witness.

12       (j) A district court may hear an appeal of a hearing  
13 examiner's award only on the grounds that the hearing examiner was  
14 without jurisdiction or exceeded the hearing examiner's  
15 jurisdiction or that the order was procured by fraud, collusion, or  
16 other unlawful means. An appeal must be brought in the district  
17 court having jurisdiction in the county in which the department is  
18 located.

19       SECTION 3. This Act takes effect September 1, 2009.