

By: Menendez

H.B. No. 3116

A BILL TO BE ENTITLED

AN ACT

relating to the creation of an alternate sheriff's department civil service system in certain counties; creating offenses.

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

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

SUBCHAPTER C. ALTERNATE SHERIFF'S DEPARTMENT CIVIL SERVICE SYSTEM
IN COUNTIES WITH POPULATION OVER 50,000

Sec. 158.101. PURPOSE. (a) The purpose of this subchapter is to secure efficient sheriff's departments and county correctional systems composed of capable personnel who are free from political influence and who have permanent employment tenure as public servants.

(b) The members of the Sheriff's Department Civil Service Commission shall administer this subchapter in accordance with this purpose.

Sec. 158.102. COUNTIES COVERED BY SUBCHAPTER. (a) This subchapter applies only to a county that:

(1) has a population of 50,000 or more; and

(2) has voted to adopt this subchapter.

(b) Population under Subsection (a)(1) is determined by the most recent:

(1) federal decennial census; or

(2) annual population estimate provided by the state

1 demographer under Chapter 468, Government Code, if that estimate is
2 more recent than the most recent federal decennial census.

3 (c) If this subchapter applies to a county as provided by
4 Subsection (a), the application of this subchapter to the county is
5 not affected if the county's population changes and the county no
6 longer meets the population requirement of Subsection (a)(1).

7 (d) A civil service system created under this subchapter
8 applies to the county jailers and deputy sheriffs employed by the
9 county in which the civil service system is created and replaces any
10 previously existing system covering those employees. A civil
11 service system created under this subchapter does not affect
12 employees of a county, including employees of a sheriff's
13 department, who are covered by a civil service system created under
14 Subchapter A or another law and who are not deputy sheriffs or
15 county jailers.

16 Sec. 158.103. DEFINITIONS. In this subchapter:

17 (1) "Commission" means the Sheriff's Department Civil
18 Service Commission.

19 (2) "Department" means a sheriff's department or
20 county correctional system.

21 (3) "Director" means the director of the sheriff's
22 department civil service.

23 (4) "Employee" means a deputy sheriff or a county
24 jailer.

25 Sec. 158.104. ELECTION TO ADOPT OR REPEAL SUBCHAPTER. (a) A
26 county may hold an election to adopt or repeal this subchapter as
27 provided by this section.

1 (b) If the commissioners court of the county receives a
2 petition requesting an election that is signed by a number of
3 qualified voters of the county equal to at least 10 percent of the
4 number of voters who voted in the most recent county election, the
5 commissioners court shall order an election submitting to the
6 voters the question of whether this subchapter should be adopted.
7 The election must be held on the first authorized uniform election
8 date prescribed by Chapter 41, Election Code, that occurs after the
9 petition is filed and that allows sufficient time to comply with
10 other requirements of law.

11 (c) The ballot shall be printed to provide for voting for or
12 against the proposition: "Adoption of the sheriff's department
13 civil service law." If a majority of the votes received in the
14 election are in favor of adoption of this subchapter, the
15 commissioners court shall implement this subchapter.

16 (d) If an election is held under Subsection (b), a petition
17 for a subsequent election to be held under that subsection may not
18 be filed for at least one year after the date the previous election
19 was held. To be valid, a petition for a subsequent election must
20 contain the signatures of a number of qualified voters of the county
21 equal to at least 20 percent of the number of voters who voted in the
22 most recent county election. Any subsequent election must be held
23 at the next general county election that occurs after the petition
24 is filed.

25 (e) If the commissioners court of a county that has operated
26 under this subchapter for at least one year receives a petition
27 requesting an election to repeal this subchapter that is signed by

1 at least 10 percent of the qualified voters of the county, the
2 commissioners court shall order an election submitting to the
3 voters the question on whether this subchapter should be repealed.
4 If a majority of the qualified voters vote to repeal this
5 subchapter, this subchapter is void in that county.

6 Sec. 158.105. STATUS OF EMPLOYEES IF SUBCHAPTER ADOPTED.

7 Each employee of the sheriff's department serving in a county that
8 adopts this subchapter who has been in the service of the sheriff's
9 department for more than six months at the time this subchapter is
10 adopted and who is entitled to civil service classification has the
11 status of a civil service employee and is not required to take a
12 competitive examination to remain in the position the person
13 occupies at the time of the adoption.

14 Sec. 158.106. IMPLEMENTATION: COMMISSION. (a) On adoption
15 of this subchapter, the Sheriff's Department Civil Service
16 Commission is established in the county. The county judge of the
17 county shall appoint the members of the commission within 60 days
18 after the date this subchapter is adopted. Within 30 days after the
19 date the county's first full fiscal year begins after the date of
20 the adoption election, the commissioners court of the county shall
21 implement this subchapter.

22 (b) The commission consists of three members appointed by
23 the county judge and confirmed by the commissioners court of the
24 county. Members serve staggered two-year terms with the term of one
25 or two members expiring each year. If a vacancy occurs or if an
26 appointee fails to qualify within 10 days after the date of
27 appointment, the county judge shall appoint a person to serve for

1 the remainder of the unexpired term in the same manner as the
2 original appointment. When the system is first adopted, the county
3 judge shall designate one member to serve a one-year term and two
4 members to serve a two-year term.

5 (c) A person appointed to the commission must:

6 (1) be of good moral character;

7 (2) be a United States citizen;

8 (3) be a resident of the county who has resided in the
9 county for more than three years;

10 (4) be over 25 years of age; and

11 (5) not have held a public office within the preceding
12 three years.

13 (d) Notwithstanding Subsection (c)(5), the county judge may
14 reappoint a commission member to consecutive terms. A commission
15 member may not be reappointed to more than a third consecutive term
16 unless the member's reappointment to a fourth or subsequent
17 consecutive term is confirmed by a two-thirds majority of all the
18 members of the commissioners court.

19 (e) Subsection (c)(5) does not prohibit the county judge
20 from appointing a former commission member to the commission if the
21 only public office held by the former member within the preceding
22 three years is membership on:

23 (1) the commission; or

24 (2) the commission and the county's civil service
25 board for employees other than employees covered by this subchapter
26 through a joint appointment to the commission and board.

27 (f) If a county or the sheriff's department has a civil

1 service commission immediately before this subchapter takes effect
2 in that county, that civil service commission shall continue as the
3 commission established by this section and shall administer the
4 civil service system as prescribed by this subchapter. As the terms
5 of the members of the previously existing commission expire, the
6 county judge shall appoint members as prescribed by this section,
7 including making initial appointments in accordance with
8 Subsection (b).

9 (g) Initial members shall elect a chair and a vice chair
10 within 10 days after the date all members have qualified. Each
11 January, the members shall elect a chair and a vice chair.

12 (h) The commissioners court of the county shall provide to
13 the commission adequate and suitable office space in which to
14 conduct business.

15 (i) The county judge commits an offense if the county judge
16 knowingly or intentionally fails to appoint the initial members of
17 the commission within the 60-day period prescribed by Subsection
18 (a). An offense under this subsection is a misdemeanor punishable
19 by a fine of not less than \$100 or more than \$200. Each day after
20 the 60-day period that the county judge knowingly or intentionally
21 fails to make a required appointment constitutes a separate
22 offense.

23 (j) The county judge, the sheriff, or another county
24 official commits an offense if the person knowingly or
25 intentionally refuses to implement this subchapter or attempts to
26 obstruct the enforcement of this subchapter. An offense under this
27 subsection is a misdemeanor punishable by a fine of not less than

1 \$100 or more than \$200.

2 Sec. 158.107. REMOVAL OF COMMISSION MEMBER. (a) If at a
3 meeting held for that purpose the commissioners court of the county
4 finds that a civil service commission member is guilty of
5 misconduct in office, the commissioners court may remove the
6 member. The member may request that the meeting be held as an open
7 hearing in accordance with Chapter 551, Government Code.

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

14 (c) The commissioners court may appoint a substitute civil
15 service commission member during a period of suspension. If a
16 member pleads guilty to or is found to be guilty of a criminal
17 offense involving moral turpitude, the commissioners court shall
18 appoint a replacement member to serve the remainder of the
19 disqualified member's term of office.

20 Sec. 158.108. ADOPTION AND PUBLICATION OF RULES. (a) A
21 commission shall adopt rules necessary for the proper conduct of
22 commission business.

23 (b) The commission may not adopt a rule permitting the
24 appointment or employment of a person who is:

25 (1) without good moral character;

26 (2) physically or mentally unfit; or

27 (3) incompetent to discharge the duties of the

1 appointment or employment.

2 (c) The commission shall adopt rules that prescribe cause
3 for removal or suspension of an employee. The rules must comply
4 with the grounds for removal prescribed by Section 158.151.

5 (d) The commission shall publish each rule it adopts and
6 each classification and seniority list for the department. The
7 rules and lists shall be made available on demand. A rule is
8 considered to be adopted and sufficiently published if the
9 commission adopts the rule by majority vote and causes the rule to
10 be written, typewritten, or printed. Publication in a newspaper is
11 not required and the commissioners court of the county is not
12 required to act on the rule.

13 (e) A rule is not valid and binding on the commission until
14 the commission:

15 (1) mails a copy of the rule to the commissioner, if
16 the county has an elected commissioner, and to the sheriff;

17 (2) posts a copy of the rule for a seven-day period at
18 a conspicuous place in the sheriff's department headquarters or
19 county jail; and

20 (3) mails a copy of the rule to each other sheriff's
21 department or county correctional facility.

22 (f) The director shall keep copies of all rules for free
23 distribution to members of the department who request copies and
24 for inspection by any interested person.

25 Sec. 158.109. COMMISSION INVESTIGATIONS AND INSPECTIONS.

26 (a) The commission or a commission member designated by the
27 commission may investigate and report on all matters relating to

1 the enforcement and effect of this subchapter and any rules adopted
2 under this subchapter and shall determine if the subchapter and
3 rules are being obeyed.

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

6 (1) administer oaths;

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

10 (3) cause the deposition of witnesses residing inside
11 or outside the state.

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

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

19 (e) A person who fails to respond to a subpoena issued under
20 this section commits an offense punishable as prescribed by Section
21 158.115.

22 Sec. 158.110. COMMISSION APPEAL PROCEDURE. (a) Except as
23 otherwise provided by this subchapter, if an employee wants to
24 appeal to the commission from an action for which an appeal or
25 review is provided by this subchapter, the employee must file an
26 appeal with the commission within 10 days after the date the action
27 occurred.

1 (b) The appeal must include the basis for the appeal and a
2 request for a commission hearing. The appeal must also contain a
3 statement denying the truth of the charge as made, a statement
4 taking exception to the legal sufficiency of the charge, a
5 statement alleging that the recommended action does not fit the
6 offense or alleged offense, or a combination of these statements.

7 (c) In each hearing, appeal, or review of any kind in which
8 the commission performs an adjudicatory function, the affected
9 employee is entitled to be represented by counsel or a person the
10 employee chooses. Each commission proceeding shall be held in
11 public.

12 (d) The commission may issue subpoenas and subpoenas duces
13 tecum for the attendance of witnesses and for the production of
14 documentary material.

15 (e) The affected employee may request the commission to
16 subpoena any books, records, documents, papers, accounts, or
17 witnesses that the employee considers pertinent to the case. The
18 employee must make the request before the 10th day before the date
19 the commission hearing will be held. If the commission does not
20 subpoena the material, the commission shall, before the third day
21 before the date the hearing will be held, make a written report to
22 the employee stating the reason it will not subpoena the requested
23 material. This report shall be read into the public record of the
24 commission hearing.

25 (f) Witnesses may be placed under the rule at the commission
26 hearing.

27 (g) The commission shall conduct the hearing fairly and

1 impartially as prescribed by this subchapter and shall render a
2 just and fair decision. The commission may consider only the
3 evidence submitted at the hearing.

4 (h) The commission shall maintain a public record of each
5 proceeding with copies available at cost.

6 Sec. 158.111. DECISIONS AND RECORDS. (a) Each concurring
7 commission member shall sign a decision issued by the commission.

8 (b) The commission shall keep records of each hearing or
9 case that comes before the commission.

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

13 Sec. 158.112. DIRECTOR. (a) On adoption of this
14 subchapter, the office of director of Sheriff's Department Civil
15 Service Commission is established in the county. The commission
16 shall appoint the director. The director shall serve as secretary
17 to the commission and perform work incidental to the civil service
18 system as required by the commission. The commission may remove the
19 director at any time.

20 (b) A person appointed as director must meet each
21 requirement for appointment to the commission prescribed by Section
22 158.106(c).

23 (c) A person appointed as director may be a commission
24 member, a county employee, or some other person.

25 (d) The commissioners court shall determine the salary, if
26 any, to be paid to the director.

27 (e) If, immediately before this subchapter takes effect in a

1 county, the county or the sheriff's department has a duly and
2 legally constituted director of civil service, regardless of title,
3 that director shall continue in office as the director established
4 by this section and shall administer the civil service system as
5 prescribed by this subchapter.

6 Sec. 158.113. APPOINTMENT AND REMOVAL OF PERSON CLASSIFIED
7 IMMEDIATELY BELOW SHERIFF. (a) If approved by the commissioners
8 court of the county by resolution or order, the sheriff of a county
9 in which at least four classifications exist below the sheriff may
10 appoint each person occupying an authorized position in the
11 classification immediately below that of sheriff, as prescribed by
12 this section. The classification immediately below that of sheriff
13 may include a person who has a different title but has the same pay
14 grade.

15 (b) A person appointed to a position in the classification
16 immediately below that of sheriff must:

17 (1) be employed by the county's sheriff's department
18 as a deputy sheriff or county jailer; and

19 (2) have at least two years' continuous service in that
20 department as a deputy sheriff or county jailer.

21 (c) The sheriff shall make each appointment under this
22 section within 90 days after the date a vacancy occurs in the
23 position.

24 (d) A person appointed under this section serves at the
25 pleasure of the sheriff. A person who is removed from the position
26 by the sheriff shall be reinstated in the department and placed in
27 the same classification, or its equivalent, that the person held

1 before appointment. The person retains all rights of seniority in
2 the department.

3 (e) If a person appointed under this section is charged with
4 an offense in violation of civil service rules and indefinitely
5 suspended by the sheriff, the person has the same rights and
6 privileges of a hearing before the commission in the same manner and
7 under the same conditions as a classified employee. If the
8 commission, a hearing examiner, or a court of competent
9 jurisdiction finds the charges to be untrue or unfounded, the
10 person shall immediately be restored to the same classification, or
11 its equivalent, that the person held before appointment. The
12 person has all the rights and privileges of the prior position
13 according to seniority, and shall be repaid for any lost wages.

14 Sec. 158.114. APPEAL OF COMMISSION DECISION TO DISTRICT
15 COURT. (a) If an employee is dissatisfied with any commission
16 decision, the employee may file a petition in district court asking
17 that the decision be set aside. The petition must be filed within
18 10 days after the date the final commission decision:

19 (1) is sent to the employee by certified mail; or
20 (2) is personally received by the employee or by that
21 person's designee.

22 (b) An appeal under this section is by trial de novo. The
23 district court may grant the appropriate legal or equitable relief
24 necessary to carry out the purposes of this subchapter. The relief
25 may include reinstatement or promotion with back pay if an order of
26 suspension, dismissal, or demotion is set aside.

27 (c) The court may award reasonable attorney's fees to the

1 prevailing party and assess court costs against the nonprevailing
2 party.

3 (d) If the court finds for the employee, the court shall
4 order the county to pay lost wages to the employee.

5 Sec. 158.115. PENALTY FOR VIOLATION OF SUBCHAPTER. (a) An
6 employee commits an offense if the person violates this subchapter.

7 (b) An offense under this section or Section 158.109 is a
8 misdemeanor punishable by a fine of not less than \$10 or more than
9 \$100, confinement in the county jail for not more than 30 days, or
10 both the fine and the confinement.

11 Sec. 158.121. CLASSIFICATION; EXAMINATION REQUIREMENT.

12 (a) The commission shall provide for the classification of all
13 employees. The commissioners court shall establish the
14 classifications by order. The commissioners court by order shall
15 prescribe the number of positions in each classification.

16 (b) Except for the sheriff and a person the sheriff appoints
17 in accordance with Section 158.113, each employee is classified as
18 prescribed by this subchapter and has civil service protection.
19 The failure of the commissioners court to establish a position by
20 order does not result in the loss of civil service benefits by a
21 person entitled to civil service protection or appointed to the
22 position in substantial compliance with this subchapter.

23 (c) Except as provided by Sections 158.113 and 158.126, an
24 existing position or classification or a position or classification
25 created in the future either by name or by increase in salary may be
26 filled only from an eligibility list that results from an
27 examination held in accordance with this subchapter.

1 Sec. 158.122. PHYSICAL REQUIREMENTS AND EXAMINATIONS. (a)

2 The commission shall set the age and physical requirements for
3 applicants for beginning and promotional positions in accordance
4 with this subchapter. The requirements must be the same for all
5 applicants.

6 (b) The commission shall require each applicant for a
7 beginning or a promotional position to take an appropriate physical
8 examination. The commission may require each applicant for a
9 beginning position to take a mental examination. The examination
10 shall be administered by a physician, psychiatrist, or
11 psychologist, as appropriate, appointed by the commission. The
12 county shall pay for each examination.

13 (c) If an applicant is rejected by the physician,
14 psychiatrist, or psychologist, as appropriate, the applicant may
15 request another examination by a board of three physicians,
16 psychiatrists, or psychologists, as appropriate, appointed by the
17 commission. The applicant must pay for the board examination. The
18 board's decision is final.

19 Sec. 158.123. ELIGIBILITY FOR BEGINNING POSITION. (a) A
20 person may not take an entrance examination for a beginning
21 position in the department unless the person is at least 18 years of
22 age.

23 (b) A person may not be certified as eligible for a
24 beginning position in a department if the person is 45 years of age
25 or older.

26 (c) An applicant may not be certified as eligible for a
27 beginning position with a department unless the applicant meets all

1 legal requirements necessary to become eligible for future
2 licensing by the Commission on Law Enforcement Officer Standards
3 and Education.

4 (d) Each employee affected by this subchapter must be able
5 to read and write English.

6 Sec. 158.124. ENTRANCE EXAMINATION NOTICE. (a) Before the
7 10th day before the date an entrance examination is held, the
8 commission shall cause a notice of the examination to be posted in
9 plain view on a bulletin board located in the main lobby of the city
10 hall and in the commission's office. The notice must show the
11 position that is to be filled or for which the examination is to be
12 held, and the date, time, and place of the examination.

13 (b) The notice required by Subsection (a) must also state
14 the period during which the eligibility list created as a result of
15 the examination will be effective.

16 Sec. 158.125. ENTRANCE EXAMINATIONS. (a) The commission
17 shall provide for open, competitive, and free entrance examinations
18 to provide eligibility lists for beginning positions in the
19 department. The examinations are open to each person who makes a
20 proper application and meets the requirements prescribed by this
21 subchapter.

22 (b) An eligibility list for a beginning position in the
23 department may be created only as a result of a competitive
24 examination held in the presence of each applicant for the
25 position, except as provided by Subsection (d). The examination
26 must be based on the person's general knowledge and aptitude and
27 must inquire into the applicant's general education and mental

1 ability. A person may not be appointed to the department except as
2 a result of the examination.

3 (c) An applicant may not take an examination unless at least
4 one other applicant taking the examination is present.

5 (d) Examinations for beginning positions in the department
6 may be held at different locations if each applicant takes the same
7 examination and is examined in the presence of other applicants.

8 (e) An additional five points shall be added to the
9 examination grade of an applicant who served in the United States
10 armed forces, received an honorable discharge, and made a passing
11 grade on the examination.

12 (f) An applicant may not take the examination for a
13 particular eligibility list more than once.

14 (g) The commission shall keep each eligibility list for a
15 beginning position in effect for a period of not less than six
16 months or more than 12 months, unless the names of all applicants on
17 the list have been referred to the department. The commission shall
18 determine the length of the period. The commission shall give new
19 examinations at times the commission considers necessary to provide
20 required staffing for any scheduled department training academies.

21 (h) The grade to be placed on the eligibility list for each
22 applicant shall be computed by adding an applicant's points under
23 Subsection (e), if any, to the applicant's grade on the written
24 examination. Each applicant's grade on the written examination is
25 based on a maximum grade of 100 percent and is determined entirely
26 by the correctness of the applicant's answers to the questions. The
27 minimum passing grade on the examination is 70 percent. An

1 applicant must pass the examination to be placed on an eligibility
2 list.

3 Sec. 158.126. REAPPOINTMENT AFTER RESIGNATION. The
4 commission may adopt rules to allow an employee who voluntarily
5 resigns from the department to be reappointed to the department
6 without taking another departmental entrance examination.

7 Sec. 158.127. PROCEDURE FOR FILLING BEGINNING POSITIONS.

8 (a) When a vacancy occurs in a beginning position in a department,
9 the sheriff shall request in writing from the commission the names
10 of suitable persons from the eligibility list. The director shall
11 certify to the sheriff the names of the three persons having the
12 highest grades on the eligibility list.

13 (b) From the three names certified, the sheriff shall
14 appoint the person having the highest grade unless there is a valid
15 reason why the person having the second or third highest grade
16 should be appointed.

17 (c) If the sheriff does not appoint the person having the
18 highest grade, the sheriff shall clearly set forth in writing the
19 good and sufficient reason why the person having the highest grade
20 was not appointed.

21 (d) The reason required by Subsection (c) shall be filed
22 with the commission and a copy provided to the person having the
23 highest grade. If the sheriff appoints the person having the third
24 highest grade, a copy of the report shall also be furnished to the
25 person having the second highest grade.

26 Sec. 158.128. PROBATIONARY PERIOD. (a) A person appointed
27 to a beginning position in the department must serve a probationary

1 period of one year beginning on that person's date of employment as
2 an employee or academy trainee. The commission by rule may extend
3 the probationary period by not more than six months for a person
4 who:

5 (1) is not employed by a department in which a
6 collective bargaining agreement or a meet-and-confer agreement
7 currently exists or previously existed; and

8 (2) is required to attend a basic training academy for
9 initial certification by the Commission on Law Enforcement Officer
10 Standards and Education.

11 (b) During an employee's probationary period, the sheriff
12 shall discharge the person and remove the person from the payroll if
13 the person's appointment was not regular or was not made in
14 accordance with this subchapter or commission rules.

15 (c) During an employee's probationary period, the person
16 may not be prohibited from joining or required to join an employee
17 organization. Joining or not joining an employee organization is
18 not a ground for retaining or not retaining an employee serving a
19 probationary period.

20 (d) An employee who was appointed in substantial compliance
21 with this subchapter and who serves the entire probationary period
22 automatically becomes a full-fledged civil service employee and has
23 full civil service protection.

24 Sec. 158.129. ELIGIBILITY FOR PROMOTION. (a) An employee
25 is not eligible for promotion unless the person has served in that
26 department in the next lower position or other positions specified
27 by the commission for at least two years at any time before the date

1 the promotional examination is held. An employee is not eligible
2 for promotion to the rank of captain or its equivalent unless the
3 person has at least four years' actual service in that department.

4 (b) If a person is recalled on active military duty for not
5 more than 60 months, the two-year service requirement prescribed by
6 Subsection (a) does not apply and the person is entitled to have
7 time spent on active military duty considered as duty in the
8 department.

9 Sec. 158.130. PROMOTIONAL EXAMINATION NOTICE. (a) Before
10 the 90th day before the date a promotional examination is held, the
11 commission shall post a notice that lists the sources from which the
12 examination questions will be taken.

13 (b) Before the 30th day before the date a promotional
14 examination is held, the commission shall post a notice of the
15 examination in plain view on a bulletin board located in the main
16 lobby of the county courthouse and in the commission's office. The
17 notice must show the position that is to be filled or for which the
18 examination is to be held, and the date, time, and place of the
19 examination. The commission shall also furnish sufficient copies
20 of the notice for posting in the stations or subdepartments in which
21 the position will be filled.

22 (c) The notice required by Subsection (b) may also include
23 the name of each source used for the examination, the number of
24 questions taken from each source, and the chapter used in each
25 source.

26 Sec. 158.131. ELIGIBILITY FOR DEPARTMENT PROMOTIONAL
27 EXAMINATION. (a) Each promotional examination is open to each

1 employee who for at least two years immediately before the
2 examination date has continuously held a position in the
3 classification that is immediately below, in salary, the
4 classification for which the examination is to be held.

5 (b) If the department has adopted a classification plan that
6 classifies positions on the basis of similarity in duties and
7 responsibilities, each promotional examination is open to each
8 employee who has continuously held for at least two years
9 immediately before the examination date a position at the next
10 lower pay grade, if it exists, in the classification for which the
11 examination is to be held.

12 (c) If there are not sufficient employees in the next lower
13 position with two years' service in that position to provide an
14 adequate number of persons to take the examination, the commission
15 shall open the examination to persons in that position with less
16 than two years' service. If there is still an insufficient number,
17 the commission may open the examination to persons in the second
18 lower position, in salary, to the position for which the
19 examination is to be held.

20 Sec. 158.132. PROMOTIONAL EXAMINATION PROCEDURE. (a) The
21 commission shall adopt rules governing promotions and shall hold
22 promotional examinations to provide eligibility lists for each
23 classification in the department. Unless a different procedure is
24 adopted under an alternate promotional system as provided by
25 Section 158.135, the examinations shall be held substantially as
26 prescribed by this section.

27 (b)(1) Each eligible promotional candidate shall be given

1 an identical examination in the presence of the other eligible
2 promotional candidates, except that an eligible promotional
3 candidate who is serving on active military duty outside of this
4 state or in a location that is not within reasonable geographic
5 proximity to the location where the examination is being
6 administered is entitled to take the examination outside of the
7 presence of and at a different time than the other candidates and
8 may be allowed to take an examination that is not identical to the
9 examination administered to the other candidates.

10 (2) The commission may adopt rules under Subsection
11 (a) providing for the efficient administration of promotional
12 examinations to eligible promotional candidates who are members of
13 the armed forces serving on active military duty. In adopting the
14 rules, the commission shall ensure that the administration of the
15 examination will not result in unnecessary interference with any
16 ongoing military effort. The rules shall require that:

17 (A) at the discretion of the administering
18 entity, an examination that is not identical to the examination
19 administered to other eligible promotional candidates may be
20 administered to an eligible promotional candidate who is serving on
21 active military duty; and

22 (B) if a candidate serving on active military
23 duty takes a promotional examination outside the presence of other
24 candidates and passes the examination, the candidate's name shall
25 be included in the eligibility list of names of promotional
26 candidates who took and passed the examination nearest in time to
27 the time at which the candidate on active military duty took the

1 examination.

2 (c) The examination must be entirely in writing and may not
3 in any part consist of an oral interview.

4 (d) The examination questions must test the knowledge of the
5 eligible promotional candidates about information and facts and
6 must be based on:

7 (1) the duties of the position for which the
8 examination is held;

9 (2) material that is of reasonably current publication
10 and that has been made reasonably available to each member of the
11 department involved in the examination; and

12 (3) any study course given by the departmental schools
13 of instruction.

14 (e) The examination questions must be taken from the sources
15 posted as prescribed by Section 158.130(a). Employees may suggest
16 source materials for the examinations.

17 (f) The examination questions must be prepared and composed
18 so that the grading of the examination can be promptly completed
19 immediately after the examination is over.

20 (g) The director is responsible for the preparation and
21 security of each promotional examination. The fairness of the
22 competitive promotional examination is the responsibility of the
23 commission, the director, and each county employee involved in the
24 preparation or administration of the examination.

25 (h) A person commits an offense if the person knowingly or
26 intentionally:

27 (1) reveals a part of a promotional examination to an

1 unauthorized person; or

2 (2) receives from an authorized or unauthorized person
3 a part of a promotional examination for unfair personal gain or
4 advantage.

5 (i) An offense under Subsection (h) is a misdemeanor
6 punishable by a fine of not less than \$1,000, confinement in the
7 county jail for not more than one year, or both the fine and the
8 confinement.

9 Sec. 158.133. PROMOTIONAL EXAMINATION GRADES. (a) The
10 grading of each promotional examination shall begin when one
11 eligible promotional candidate completes the examination. As the
12 eligible promotional candidates finish the examination, the
13 examinations shall be graded at the examination location and in the
14 presence of any candidate who wants to remain during the grading.

15 (b) Each employee is entitled to receive one point for each
16 year of seniority as a classified police officer in that
17 department, with a maximum of 10 points.

18 (c) Unless a different procedure is adopted under an
19 alternate promotional system as provided by Section 158.135, the
20 grade that must be placed on the eligibility list for each applicant
21 shall be computed by adding the applicant's points for seniority to
22 the applicant's grade on the written examination. Each applicant's
23 grade on the written examination is based on a maximum grade of 100
24 points and is determined entirely by the correctness of the
25 applicant's answers to the questions. All applicants who receive a
26 grade of at least 70 points shall be determined to have passed the
27 examination. If a tie score occurs, the commission shall determine

1 a method to break the tie.

2 (d) Within 24 hours after a promotional examination is held,
3 the commission shall post the individual raw test scores on a
4 bulletin board located in the main lobby of the county courthouse.

5 Sec. 158.134. REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION.

6 (a) On request, each eligible promotional candidate from the
7 department is entitled to examine the person's promotional
8 examination and answers, the examination grading, and the source
9 material for the examination. If dissatisfied, the candidate may
10 appeal, within five business days, to the commission for review in
11 accordance with this subchapter. In computing this period, a
12 Saturday, Sunday, or legal holiday is not considered a business
13 day.

14 (b) The eligible promotional candidate may not remove the
15 examination or copy a question used in the examination.

16 Sec. 158.135. ALTERNATE PROMOTIONAL SYSTEM IN DEPARTMENT.

17 (a) This section does not apply to a county that has adopted
18 Chapter 174.

19 (b) On the recommendation of the sheriff and a majority vote
20 of the employees, the commission may adopt an alternate promotional
21 system to select persons to occupy nonentry level positions other
22 than positions that are filled by appointment by the sheriff. The
23 promotional system must comply with the requirements prescribed by
24 this section.

25 (c) The commission shall order the director to conduct an
26 election and to submit the revised promotional system either to all
27 employees within the rank immediately below the classification for

1 which the promotional examination is to be administered or to all
2 employees.

3 (d) The director shall hold the election on or after the
4 30th day after the date notice of the election is posted at the
5 department. The election shall be conducted throughout each
6 regular work shift at an accessible location within the department
7 during a 24-hour period.

8 (e) The ballot shall contain the specific amendment to the
9 promotional procedure. Each employee shall be given the
10 opportunity to vote by secret ballot "for" or "against" the
11 amendment.

12 (f) The revised promotional system must be approved by a
13 majority vote of the employees voting. A defeated promotional
14 system amendment may not be placed on a ballot for a vote by the
15 employees for at least 12 months after the date the prior election
16 was held, but this provision does not apply if the sheriff
17 recommends a different proposal to the commission.

18 (g) The commission shall canvass the votes within 30 days
19 after the date the election is held. An appeal alleging election
20 irregularity must be filed with the commission within five working
21 days after the date the election closes. If approved by the
22 employees, the promotional system amendment becomes effective
23 after all election disputes have been ruled on and the election
24 votes have been canvassed by the commission.

25 (h) At any time after an alternate promotional system has
26 been adopted under this section and has been in effect for at least
27 180 days, the sheriff may petition the commission to terminate the

1 alternate system, and the commission shall terminate the alternate
2 system.

3 (i) At any time after an alternate promotional system has
4 been adopted under this section and has been in effect for at least
5 180 days, a petition signed by at least 35 percent of the employees
6 may be submitted to the commission asking that the alternate
7 promotional system be reconsidered. If a petition is submitted,
8 the commission shall, within 60 days after the date the petition is
9 filed, hold an election as prescribed by this section. If a
10 majority of those voting vote to terminate, the commission shall
11 terminate the alternate promotional system.

12 (j) If the alternate system is terminated, an additional
13 list may not be created under the alternate system.

14 (k) A promotional list may not be created if an election
15 under this section is pending. An existing eligibility list,
16 whether created under the system prescribed by this subchapter or
17 created under an alternate system adopted under this section, may
18 not be terminated before or extended beyond its expiration date. A
19 person promoted under an alternate system has the same rights and
20 the same status as a person promoted under this subchapter even if
21 the alternate system is later terminated.

22 Sec. 158.136. PROCEDURE FOR MAKING PROMOTIONAL
23 APPOINTMENTS. (a) When a vacancy occurs in a nonentry position
24 that is not appointed by the sheriff as provided by Section 158.113,
25 the vacancy shall be filled as prescribed by this section. A
26 vacancy in a departmental position described by this subsection
27 occurs on the date the position is vacated by:

- 1 (1) resignation;
2 (2) retirement;
3 (3) death;
4 (4) promotion; or
5 (5) issuance of an indefinite suspension in accordance
6 with Section 158.152(a).

7 (b) If an eligibility list for the position to be filled
8 exists on the date the vacancy occurs, the director, on request by
9 the sheriff, shall certify to the sheriff the names of the three
10 persons having the highest grades on that eligibility list. The
11 commission shall certify the names within 10 days after the date the
12 commission is notified of the vacancy. If fewer than three names
13 remain on the eligibility list or if only one or two eligible
14 promotional candidates passed the promotional examination, each
15 name on the list must be submitted to the sheriff.

16 (c) The commission shall submit names from an existing
17 eligibility list to the sheriff until the vacancy is filled or the
18 list is exhausted.

19 (d) If an eligibility list does not exist on the date a
20 vacancy occurs or a new position is created, the commission shall
21 hold an examination to create a new eligibility list within 90 days
22 after the date the vacancy occurs or a new position is created.

23 (e) If an eligibility list exists on the date a vacancy
24 occurs, the sheriff shall fill the vacancy by permanent appointment
25 from the eligibility list furnished by the commission within 60
26 days after the date the vacancy occurs. If an eligibility list does
27 not exist, the sheriff shall fill the vacancy by permanent

1 appointment from an eligibility list that the commission shall
2 provide within 90 days after the date the vacancy occurs.

3 (f) Unless the sheriff has a valid reason for not appointing
4 the person, the sheriff shall appoint the eligible promotional
5 candidate having the highest grade on the eligibility list. If the
6 sheriff has a valid reason for not appointing the eligible
7 promotional candidate having the highest grade, the sheriff shall
8 personally discuss the reason with the person being bypassed before
9 appointing another person. The sheriff shall also file the reason
10 in writing with the commission and shall provide the person with a
11 copy of the written notice. On application of the bypassed eligible
12 promotional candidate, the reason the sheriff did not appoint that
13 person is subject to review by the commission or, on the written
14 request of the person being bypassed, by an independent third-party
15 hearing examiner under Section 158.157.

16 (g) If a person is bypassed, the person's name is returned
17 to its place on the eligibility list and shall be resubmitted to the
18 sheriff if a vacancy occurs. If the sheriff refuses three times to
19 appoint a person, files the reasons for the refusals in writing with
20 the commission, and the commission does not set aside the refusals,
21 the person's name shall be removed from the eligibility list.

22 (h) Each promotional eligibility list remains in existence
23 for one year after the date on which the written examination is
24 given, unless exhausted. At the expiration of the one-year period,
25 the eligibility list expires and a new examination may be held.

26 Sec. 158.137. RECORD OF CERTIFICATION AND APPOINTMENT. (a)
27 When a person is certified and appointed to a position in the

1 department, the director shall forward the appointed person's
2 record to the sheriff. The director shall also forward a copy of
3 the record to the county judge and shall retain a copy in the civil
4 service files.

5 (b) The record must contain:

6 (1) the date notice of examination for the position
7 was posted;

8 (2) the date on which the appointed person took the
9 examination;

10 (3) the name of each person who conducted the
11 examination;

12 (4) the relative position of the appointed person on
13 the eligibility list;

14 (5) the date the appointed person took the physical
15 examination, the name of the examining physician, and whether the
16 person was accepted or rejected;

17 (6) the date the request to fill the vacancy was made;

18 (7) the date the appointed person was notified to
19 report for duty; and

20 (8) the date the appointed person's pay is to start.

21 (c) If the director intentionally fails to comply with this
22 section, the commission shall immediately remove the director from
23 office.

24 (d) The director's failure to comply with this section does
25 not affect the civil service status of an employee.

26 Sec. 158.138. TEMPORARY DUTIES IN HIGHER CLASSIFICATION.

27 (a) The sheriff may designate a person from the next lower

1 classification to temporarily fill a position in a higher
2 classification. The designated person is entitled to the base
3 salary of the higher position plus the person's own longevity or
4 seniority pay, educational incentive pay, and certification pay
5 during the time the person performs the duties.

6 (b) The temporary performance of the duties of a higher
7 position by a person who has not been promoted as prescribed by this
8 subchapter may not be construed as a promotion.

9 Sec. 158.141. SALARY. (a) Except as provided by Section
10 158.138, all employees in the same classification are entitled to
11 the same base salary.

12 (b) In addition to the base salary, each employee is
13 entitled to each of the following types of pay, if applicable:

14 (1) longevity or seniority pay;

15 (2) educational incentive pay as authorized by Section
16 158.144;

17 (3) assignment pay as authorized by Sections 158.142
18 and 158.143;

19 (4) certification pay as authorized by Section
20 158.144;

21 (5) shift differential pay as authorized by Section
22 158.147; and

23 (6) fitness incentive pay as authorized by Section
24 158.144.

25 Sec. 158.142. ASSIGNMENT PAY. (a) The commissioners court
26 of a county may authorize assignment pay for employees who perform
27 specialized functions in their respective departments.

1 (b) The assignment pay is in an amount and is payable under
2 conditions set by order and is in addition to the regular pay
3 received by members of the department.

4 (c) If the order applies equally to each person who meets
5 the criteria established by the order, the order may provide for
6 payment to each employee who meets training or education criteria
7 for an assignment or the order may set criteria that provide for
8 payment only to an employee in a special assignment.

9 (d) The sheriff is not eligible for the assignment pay
10 authorized by this section.

11 Sec. 158.143. FIELD TRAINING OFFICER ASSIGNMENT PAY. (a)
12 In this section, "field training officer" means a member of the
13 department who is assigned to and performs the duties and
14 responsibilities of the field training officers program.

15 (b) The commissioners court of a county may authorize
16 assignment pay for field training officers. The assignment pay is
17 in an amount and is payable under conditions set by order and is in
18 addition to the regular pay received by members of the department.

19 (c) The sheriff is not eligible for the assignment pay
20 authorized by this section.

21 Sec. 158.144. CERTIFICATION, EDUCATIONAL INCENTIVE, AND
22 FITNESS INCENTIVE PAY. (a) If each employee in a county is
23 afforded an opportunity to qualify for certification, the
24 commissioners court may authorize certification pay to those
25 employees who meet the requirements for certification set by the
26 Commission on Law Enforcement Officer Standards and Education.

27 (b) If the criteria for educational incentive pay are

1 clearly established, are in writing, and are applied equally to
2 each employee in a county who meets the criteria, the commissioners
3 court may authorize educational incentive pay for each employee who
4 has successfully completed courses at an accredited college or
5 university.

6 (c) If the criteria for fitness incentive pay are clearly
7 established, are in writing, and are applied equally to each
8 employee in a county who meets the criteria, the commissioners
9 court may authorize fitness incentive pay for each employee who
10 successfully meets the criteria.

11 (d) The certification pay, educational incentive pay, and
12 fitness incentive pay are in addition to an employee's regular pay.

13 Sec. 158.145. ACCUMULATION AND PAYMENT OF SICK LEAVE. (a)
14 A permanent or temporary employee is allowed sick leave with pay
15 accumulated at the rate of 1-1/4 full working days for each full
16 month employed in a calendar year, so as to total 15 working days to
17 a person's credit each 12 months.

18 (b) An employee may accumulate sick leave without limit and
19 may use the leave if unable to work because of a bona fide illness.
20 If an ill employee exhausts the sick leave and can conclusively
21 prove that the illness was incurred in the performance of duties, an
22 extension of sick leave shall be granted.

23 (c) Except as otherwise provided by Section 158.113, an
24 employee who leaves the classified service for any reason is
25 entitled to receive in a lump-sum payment the full amount of the
26 person's salary for accumulated sick leave if the person has
27 accumulated not more than 90 days of sick leave. If an employee has

1 accumulated more than 90 working days of sick leave, the person's
2 employer may limit payment to the amount that the person would have
3 received if the person had been allowed to use 90 days of
4 accumulated sick leave during the last six months of employment.
5 The lump-sum payment is computed by compensating the employee for
6 the accumulated time at the highest permanent pay classification
7 for which the person was eligible during the last six months of
8 employment. The employee is paid for the same period for which the
9 person would have been paid if the person had taken the sick leave,
10 but the payment does not include additional holidays and any sick
11 leave or vacation time that the person might have accrued during the
12 90 days.

13 (d) To facilitate the settlement of the accounts of deceased
14 employees, all unpaid compensation, including all accumulated sick
15 leave, due at the time of death to an active employee who dies as a
16 result of a line-of-duty injury or illness, shall be paid to the
17 persons in the first applicable category of the following
18 prioritized list:

19 (1) to the beneficiary or beneficiaries the employee
20 designated in writing to receive the compensation and filed with
21 the commission before the person's death;

22 (2) to the employee's widow or widower;

23 (3) to the employee's child or children and to the
24 descendants of a deceased child, by representation;

25 (4) to the employee's parents or to their survivors; or

26 (5) to the properly appointed legal representative of
27 the employee's estate, or in the absence of a representative, to the

1 person determined to be entitled to the payment under the state law
2 of descent and distribution.

3 (e) Payment of compensation to a person in accordance with
4 Subsection (d) is a bar to recovery by another person.

5 Sec. 158.146. VACATIONS. (a) Each employee is entitled to
6 earn a minimum of 15 working days' vacation leave with pay in each
7 year.

8 (b) In computing the length of time an employee may be
9 absent from work on vacation leave, only those calendar days during
10 which the person would be required to work if not on vacation may be
11 counted as vacation days.

12 (c) Unless approved by the county's governing body, an
13 employee may not accumulate vacation leave from year to year.

14 Sec. 158.147. SHIFT DIFFERENTIAL PAY. (a) The
15 commissioners court of a county may authorize shift differential
16 pay for employees who work a shift in which more than 50 percent of
17 the time worked is after 6 p.m. and before 6 a.m.

18 (b) The shift differential pay is in an amount and is
19 payable under conditions set by order and is in addition to the
20 regular pay received by members of the department.

21 Sec. 158.151. CAUSE FOR REMOVAL OR SUSPENSION. A
22 commission rule prescribing cause for removal or suspension of an
23 employee is not valid unless it involves one or more of the
24 following grounds:

25 (1) conviction of a felony or other crime involving
26 moral turpitude;

27 (2) violations of a municipal charter provision;

- 1 (3) acts of incompetency;
- 2 (4) neglect of duty;
- 3 (5) discourtesy to the public or to a fellow employee
4 while the employee is in the line of duty;
- 5 (6) acts showing lack of good moral character;
- 6 (7) drinking intoxicants while on duty or intoxication
7 while off duty;
- 8 (8) conduct prejudicial to good order;
- 9 (9) refusal or neglect to pay just debts;
- 10 (10) absence without leave; or
- 11 (11) violation of an applicable department rule or
12 special order.

13 Sec. 158.152. DISCIPLINARY SUSPENSIONS. (a) The sheriff
14 may suspend an employee under the sheriff's supervision or
15 jurisdiction for the violation of a civil service rule. The
16 suspension may be for a reasonable period not to exceed 15 calendar
17 days or for an indefinite period. An indefinite suspension is
18 equivalent to dismissal from the department.

19 (b) If the sheriff suspends an employee, the sheriff shall,
20 within 120 hours after the hour of suspension, file a written
21 statement with the commission giving the reasons for the
22 suspension. The sheriff shall immediately deliver a copy of the
23 statement in person to the suspended employee.

24 (c) The copy of the written statement must inform the
25 suspended employee that if the person wants to appeal to the
26 commission, the person must file a written appeal with the
27 commission within 10 days after the date the person receives the

1 copy of the statement.

2 (d) The written statement filed by the sheriff with the
3 commission must point out each civil service rule alleged to have
4 been violated by the suspended employee and must describe the
5 alleged acts of the person that the sheriff contends are in
6 violation of the civil service rules. It is not sufficient for the
7 sheriff merely to refer to the provisions of the rules alleged to
8 have been violated.

9 (e) If the sheriff does not specifically point out in the
10 written statement the act or acts of the employee that allegedly
11 violated the civil service rules, the commission shall promptly
12 reinstate the person.

13 (f) If offered by the sheriff, the employee may agree in
14 writing to voluntarily accept, with no right of appeal, a
15 suspension of 16 to 90 calendar days for the violation of a civil
16 service rule. The employee must accept the offer within five
17 working days after the date the offer is made. If the person
18 refuses the offer and wants to appeal to the commission, the person
19 must file a written appeal with the commission within 15 days after
20 the date the person receives the copy of the written statement of
21 suspension.

22 (g) In the original written statement and charges and in any
23 hearing conducted under this subchapter, the sheriff may not
24 complain of an act that occurred earlier than the 180th day
25 preceding the date the sheriff suspends the employee. If the act is
26 allegedly related to criminal activity including the violation of a
27 federal, state, or local law for which the employee is subject to a

1 criminal penalty, the sheriff may not complain of an act that is
2 discovered earlier than the 180th day preceding the date the
3 sheriff suspends the employee. The sheriff must allege that the act
4 complained of is related to criminal activity.

5 Sec. 158.153. APPEAL OF DISCIPLINARY SUSPENSION. (a) If a
6 suspended employee appeals the suspension to the commission, the
7 commission shall hold a hearing and render a decision in writing
8 within 30 days after the date it receives notice of appeal. The
9 suspended person and the commission may agree to postpone the
10 hearing for a definite period.

11 (b) In a hearing conducted under this section, the sheriff
12 is restricted to the sheriff's original written statement and
13 charges, which may not be amended.

14 (c) The commission may deliberate the decision in closed
15 session but may not consider evidence that was not presented at the
16 hearing. The commission shall vote in open session.

17 (d) In its decision, the commission shall state whether the
18 suspended employee is:

- 19 (1) permanently dismissed from the department;
20 (2) temporarily suspended from the department; or
21 (3) restored to the person's former position or status
22 in the department's classified service.

23 (e) If the commission finds that the period of disciplinary
24 suspension should be reduced, the commission may order a reduction
25 in the period of suspension. If the suspended employee is restored
26 to the position or class of service from which the person was
27 suspended, the employee is entitled to:

1 (1) full compensation for the actual time lost as a
2 result of the suspension at the rate of pay provided for the
3 position or class of service from which the person was suspended;
4 and

5 (2) restoration of or credit for any other benefits
6 lost as a result of the suspension, including sick leave, vacation
7 leave, and service credit in a retirement system. Standard payroll
8 deductions, if any, for retirement and other benefits restored
9 shall be made from the compensation paid, and the county shall make
10 its standard corresponding contributions, if any, to the retirement
11 system or other applicable benefit systems.

12 (f) The commission may suspend or dismiss an employee only
13 for violation of civil service rules and only after a finding by the
14 commission of the truth of specific charges against the employee.

15 Sec. 158.154. DEMOTIONS. (a) If the sheriff wants an
16 employee under the sheriff's supervision or jurisdiction to be
17 involuntarily demoted, the sheriff may recommend in writing to the
18 commission that the commission demote the employee.

19 (b) The sheriff must include in the recommendation for
20 demotion the reasons the sheriff recommends the demotion and a
21 request that the commission order the demotion. The sheriff must
22 immediately furnish a copy of the recommendation in person to the
23 affected employee.

24 (c) The commission may refuse to grant the request for
25 demotion. If the commission believes that probable cause exists
26 for ordering the demotion, the commission shall give the employee
27 written notice to appear before the commission for a public hearing

1 at a time and place specified in the notice. The commission shall
2 give the notice before the 10th day before the date the hearing will
3 be held.

4 (d) The employee is entitled to a full and complete public
5 hearing, and the commission may not demote an employee without that
6 public hearing.

7 (e) A voluntary demotion in which the employee has accepted
8 the terms of the demotion in writing is not subject to this section.

9 Sec. 158.155. UNCOMPENSATED DUTY OF EMPLOYEES. (a) In this
10 section, "uncompensated duty" means days of work without pay that
11 are in addition to regular or normal work days.

12 (b) The sheriff may assign an employee under the sheriff's
13 jurisdiction or supervision to uncompensated duty. The sheriff may
14 not impose uncompensated duty unless the employee agrees to accept
15 the duty. If the employee agrees to accept uncompensated duty, the
16 sheriff shall give the person a written statement that specifies
17 the date or dates on which the person will perform uncompensated
18 duty.

19 (c) Uncompensated duty may be in place of or in combination
20 with a period of disciplinary suspension without pay. If
21 uncompensated duty is combined with a disciplinary suspension, the
22 total number of uncompensated days may not exceed 15.

23 (d) An employee may not earn or accrue any wage, salary, or
24 benefit arising from length of service while the person is
25 suspended or performing uncompensated duty. The days on which an
26 employee performs assigned uncompensated duty may not be taken into
27 consideration in determining eligibility for a promotional

1 examination. A disciplinary suspension does not constitute a break
2 in a continuous position or in service in the department in
3 determining eligibility for a promotional examination.

4 (e) Except as provided by this section, an employee who
5 performs assigned uncompensated duty retains all rights and
6 privileges of the person's position in the department and of the
7 person's employment by the county.

8 Sec. 158.156. PROCEDURES AFTER FELONY INDICTMENT OR
9 MISDEMEANOR COMPLAINT. (a) If an employee is indicted for a felony
10 or officially charged with the commission of a Class A or B
11 misdemeanor, the sheriff may temporarily suspend the person with or
12 without pay for a period not to exceed 30 days after the date of
13 final disposition of the specified felony indictment or misdemeanor
14 complaint.

15 (b) The sheriff shall notify the suspended employee in
16 writing that the person is being temporarily suspended for a
17 specific period with or without pay and that the temporary
18 suspension is not intended to reflect an opinion on the merits of
19 the indictment or complaint.

20 (c) If the action directly related to the felony indictment
21 or misdemeanor complaint occurred or was discovered on or after the
22 180th day before the date of the indictment or complaint, the
23 sheriff may, within 30 days after the date of final disposition of
24 the indictment or complaint, bring a charge against the employee
25 for a violation of civil service rules.

26 (d) An employee indicted for a felony or officially charged
27 with the commission of a Class A or B misdemeanor who has also been

1 charged by the sheriff with civil service violations directly
2 related to the indictment or complaint may delay the civil service
3 hearing for not more than 30 days after the date of the final
4 disposition of the indictment or complaint.

5 (e) If the sheriff temporarily suspends an employee under
6 this section and the employee is not found guilty of the indictment
7 or complaint in a court of competent jurisdiction, the employee may
8 appeal to the commission or to a hearing examiner for recovery of
9 back pay. The commission or hearing examiner may award all or part
10 of the back pay or reject the appeal.

11 (f) Acquittal or dismissal of an indictment or a complaint
12 does not mean that an employee has not violated civil service rules
13 and does not negate the charges that may have been or may be brought
14 against the employee by the sheriff.

15 (g) Conviction of a felony is cause for dismissal, and
16 conviction of a Class A or B misdemeanor may be cause for
17 disciplinary action or indefinite suspension.

18 (h) The sheriff may order an indefinite suspension based on
19 an act classified as a felony or a Class A or B misdemeanor after the
20 180-day period following the date of the discovery of the act by the
21 department if the sheriff considers delay to be necessary to
22 protect a criminal investigation of the person's conduct. If the
23 sheriff intends to order an indefinite suspension after the 180-day
24 period, the sheriff must file with the attorney general a statement
25 describing the criminal investigation and its objectives within 180
26 days after the date the act complained of occurred.

27 Sec. 158.157. HEARING EXAMINERS. (a) In addition to the

1 other notice requirements prescribed by this subchapter, the
2 written notice for a promotional bypass or the letter of
3 disciplinary action, as applicable, issued to an employee must
4 state that in an appeal of an indefinite suspension, a suspension, a
5 promotional bypass, or a recommended demotion, the appealing
6 employee may elect to appeal to an independent third-party hearing
7 examiner instead of to the commission. The letter must also state
8 that if the employee elects to appeal to a hearing examiner, the
9 person waives all rights to appeal to a district court except as
10 provided by Subsection (j).

11 (b) To exercise the choice of appealing to a hearing
12 examiner, the appealing employee must submit to the director a
13 written request as part of the original notice of appeal required
14 under this subchapter stating the person's decision to appeal to an
15 independent third-party hearing examiner.

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

21 (d) If the appealing employee chooses to appeal to a hearing
22 examiner, the employee and the sheriff, or their designees, shall
23 first attempt to agree on the selection of an impartial hearing
24 examiner. If the parties do not agree on the selection of a hearing
25 examiner on or within 10 days after the date the appeal is filed,
26 the director shall immediately request a list of seven qualified
27 neutral arbitrators from the American Arbitration Association or

1 the Federal Mediation and Conciliation Service, or their successors
2 in function. The employee and the sheriff, or their designees, may
3 agree on one of the seven neutral arbitrators on the list. If they
4 do not agree within five working days after the date they received
5 the list, each party or the party's designee shall alternate
6 striking a name from the list and the name remaining is the hearing
7 examiner. The parties or their designees shall agree on a date for
8 the hearing.

9 (e) The appeal hearing shall begin as soon as the hearing
10 examiner can be scheduled. If the hearing examiner cannot begin the
11 hearing within 45 calendar days after the date of selection, the
12 employee may, within two days after learning of that fact, call for
13 the selection of a new hearing examiner using the procedure
14 prescribed by Subsection (d).

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

18 (g) In a hearing conducted under this section, the parties
19 may agree to an expedited hearing procedure. Unless otherwise
20 agreed by the parties, in an expedited procedure the hearing
21 examiner shall render a decision on the appeal within 10 days after
22 the date the hearing ended.

23 (h) In an appeal that does not involve an expedited hearing
24 procedure, the hearing examiner shall make a reasonable effort to
25 render a decision on the appeal within 30 days after the date the
26 hearing ends or the briefs are filed. The hearing examiner's
27 inability to meet the time requirements imposed by this section

1 does not affect the hearing examiner's jurisdiction, the validity
2 of the disciplinary action, or the hearing examiner's final
3 decision.

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

7 (j) A district court may hear an appeal of a hearing
8 examiner's award only on the grounds that the arbitration panel was
9 without jurisdiction or exceeded its jurisdiction or that the order
10 was procured by fraud, collusion, or other unlawful means. An
11 appeal must be brought in the district court having jurisdiction in
12 the county in which the department is located.

13 Sec. 158.171. LEAVES OF ABSENCE; RESTRICTION PROHIBITED.

14 (a) If a sufficient number of employees are available to carry out
15 the normal functions of the department, an employee may not be
16 refused a reasonable leave of absence without pay to attend a law
17 enforcement school, convention, or meeting if the purpose of the
18 school, convention, or meeting is to secure a more efficient
19 department and better working conditions for department personnel.

20 (b) A rule that affects an employee's constitutional right
21 to appear before or to petition the legislature may not be adopted.

22 Sec. 158.172. MILITARY LEAVE OF ABSENCE. (a) On written
23 application of an employee, the commission shall grant the person a
24 military leave of absence without pay, subject to Section 158.175,
25 to enable the person to enter a branch of the United States military
26 service. The leave of absence may not exceed the period of
27 compulsory military service or the basic minimum enlistment period

1 for the branch of service the employee enters.

2 (b) The commission shall grant to an employee a leave of
3 absence for initial training or annual duty in the military
4 reserves or the national guard.

5 (c) While an employee who received a military leave of
6 absence serves in the military, the commission shall fill the
7 person's position in the department in accordance with this
8 subchapter. The employee who fills the position is subject to
9 replacement by the person who received the military leave at the
10 time the person returns to active duty in the department.

11 (d) On termination of active military service, an employee
12 who received a military leave of absence under this section is
13 entitled to be reinstated to the position that the person held in
14 the department at the time the leave of absence was granted if the
15 person:

16 (1) receives an honorable discharge;

17 (2) remains physically and mentally fit to discharge
18 the duties of that position; and

19 (3) makes an application for reinstatement within 90
20 days after the date the person is discharged from military service.

21 (e) On reinstatement, the employee shall receive full
22 seniority credit for the time spent in the military service.

23 (f) If the reinstatement of an employee who received a
24 military leave of absence causes that person's replacement to be
25 returned to a lower position in grade or compensation, the replaced
26 person has a preferential right to a subsequent appointment or
27 promotion to the same or a similar position from which the person

1 was demoted. This preferential right has priority over an
2 eligibility list and is subject to the replaced person remaining
3 physically and mentally fit to discharge the duties of that
4 position.

5 (g) If an employee employed by a county is called to active
6 military duty for any period, the employing county must continue to
7 maintain any health, dental, or life insurance coverage and any
8 health or dental benefits coverage that the employee received
9 through the county on the date the employee was called to active
10 military duty until the county receives written instructions from
11 the employee to change or discontinue the coverage.

12 (h) In addition to other procedures prescribed by this
13 section, an employee may, without restriction as to the amount of
14 time, voluntarily substitute for an employee described by Sections
15 158.175(b)(1) and (2) who has been called to active federal
16 military duty for a period expected to last 12 months or longer. An
17 employee who voluntarily substitutes under this subsection must be
18 qualified to perform the duties of the absent employee.

19 Sec. 158.173. LINE OF DUTY ILLNESS OR INJURY LEAVE OF
20 ABSENCE. (a) A county shall provide to an employee a leave of
21 absence for an illness or injury related to the person's line of
22 duty. The leave is with full pay for a period commensurate with the
23 nature of the line of duty illness or injury. If necessary, the
24 leave shall continue for at least one year.

25 (b) At the end of the one-year period, the commissioners
26 court may extend the line of duty illness or injury leave at full or
27 reduced pay. If the employee's leave is not extended or the

1 person's salary is reduced below 60 percent of the person's regular
2 monthly salary, and the person is a member of a pension fund, the
3 person may retire on pension until able to return to duty.

4 (c) If pension benefits are not available to an employee who
5 is temporarily disabled by a line of duty injury or illness and if
6 the year at full pay and any extensions granted by the commissioners
7 court have expired, the employee may use accumulated sick leave,
8 vacation time, and other accrued benefits before the person is
9 placed on temporary leave.

10 (d) If an employee is temporarily disabled by an injury or
11 illness that is not related to the person's line of duty, the person
12 may use all sick leave, vacation time, and other accumulated time
13 before the person is placed on temporary leave.

14 (e) After recovery from a temporary disability, an employee
15 shall be reinstated at the same rank and with the same seniority the
16 person had before going on temporary leave. Another employee may
17 voluntarily do the work of an injured employee until the person
18 returns to duty.

19 Sec. 158.174. REAPPOINTMENT AFTER RECOVERY FROM
20 DISABILITY. With the commission's approval and if otherwise
21 qualified, an employee who has been certified by a physician
22 selected by a pension fund as having recovered from a disability for
23 which the person has been receiving a monthly disability pension is
24 eligible for reappointment to the classified position that the
25 person held on the date the person qualified for the monthly
26 disability pension.

27 Sec. 158.175. MILITARY LEAVE TIME ACCOUNTS. (a) A county

1 shall maintain military leave time accounts for the department and
2 must maintain a separate military leave time account for each
3 department.

4 (b) A military leave time account shall benefit an employee
5 who:

6 (1) is a member of the Texas National Guard or the
7 armed forces reserves of the United States;

8 (2) was called to active federal military duty while
9 serving as an employee for the county;

10 (3) has served on active duty for a period of 12
11 continuous months or longer; and

12 (4) has exhausted the balance of the person's
13 vacation, holiday, and compensatory leave time accumulations.

14 (c) An employee may donate any amount of accumulated
15 vacation, holiday, sick, or compensatory leave time to the military
16 leave time account in that employee's department to help provide
17 salary continuation for employees who qualify as eligible
18 beneficiaries of the account under Subsection (b). An employee who
19 wishes to donate time to an account under this section must
20 authorize the donation in writing on a form provided by the
21 department and approved by the county.

22 (d) A county shall equally distribute the leave time donated
23 to a military leave time account among all employees who are
24 eligible beneficiaries of that account. The county shall credit
25 and debit the applicable military leave time account on an hourly
26 basis regardless of the cash value of the time donated or used.

27 Sec. 158.181. DETERMINATION OF PHYSICAL AND MENTAL FITNESS.

1 (a) If a question arises as to whether an employee is sufficiently
2 physically or mentally fit to continue the person's duties, the
3 employee shall submit to the commission a report from the person's
4 personal physician, psychiatrist, or psychologist, as appropriate.

5 (b) If the commission, the sheriff, or the employee
6 questions the report, the commission shall appoint a physician,
7 psychiatrist, or psychologist, as appropriate, to examine the
8 employee and to submit a report to the commission, the sheriff, and
9 the person.

10 (c) If the report of the appointed physician, psychiatrist,
11 or psychologist, as appropriate, disagrees with the report of the
12 employee's personal physician, psychiatrist, or psychologist, as
13 appropriate, the commission shall appoint a three-member board
14 composed of a physician, a psychiatrist, and a psychologist, or any
15 combination, as appropriate, to examine the employee. The board's
16 findings as to the person's fitness for duty shall determine the
17 issue.

18 (d) The employee shall pay the cost of the services of the
19 person's personal physician, psychiatrist, or psychologist, as
20 appropriate. The county shall pay all other costs.

21 Sec. 158.182. EFFICIENCY REPORTS. (a) The commission may
22 develop proper procedures and rules for semiannual efficiency
23 reports and grades for each employee.

24 (b) If the commission collects efficiency reports on
25 employees, the commission shall provide each person with a copy of
26 that person's report.

27 (c) Within 10 calendar days after the date an employee

1 receives the copy of the person's efficiency report, the person may
2 make a statement in writing concerning the efficiency report. The
3 statement shall be placed in the person's personnel file with the
4 efficiency report.

5 Sec. 158.183. EMERGENCY APPOINTMENT OF TEMPORARY
6 EMPLOYEES. (a) If a county is unable to recruit qualified
7 employees because of the maximum age limit prescribed by Section
8 158.123 and the commissioners court finds that this inability
9 creates an emergency, the commission shall recommend to the
10 commissioners court additional rules governing the temporary
11 employment of persons who are 45 years of age or older.

12 (b) A person employed under this section:
13 (1) is designated as a temporary employee;
14 (2) is not eligible for pension benefits;
15 (3) is not eligible for appointment or promotion if a
16 permanent applicant or employee is available;
17 (4) is not eligible to become a full-fledged civil
18 service employee; and
19 (5) must be dismissed before a permanent civil service
20 employee may be dismissed under Section 158.185.

21 Sec. 158.185. FORCE REDUCTION AND REINSTATEMENT LIST. (a)
22 If a commissioners court issues an order that vacates or abolishes a
23 department position, the employee who holds that position shall be
24 demoted to the position immediately below the vacated or abolished
25 position. If one or more positions of equal rank are vacated or
26 abolished, the employees who have the least seniority in a position
27 shall be demoted to the position immediately below the vacated or

1 abolished position. If an employee is demoted under this
2 subsection without charges being filed against the person for
3 violation of civil service rules, the employee shall be placed on a
4 position reinstatement list in order of seniority. If the vacated
5 or abolished position is filled or re-created within one year after
6 the date it was vacated or abolished, the position must be filled
7 from the reinstatement list. Appointments from the reinstatement
8 list shall be made in order of seniority. A person who is not on the
9 list may not be appointed to the position during the one-year period
10 until the reinstatement list is exhausted.

11 (b) If a position in the lowest classification is abolished
12 or vacated and an employee must be dismissed from the department,
13 the employee with the least seniority shall be dismissed. If an
14 employee is dismissed under this subsection without charges being
15 filed against the person for violation of civil service rules, the
16 employee shall be placed on a reinstatement list in order of
17 seniority. Appointments from the reinstatement list shall be made
18 in order of seniority. Until the reinstatement list is exhausted, a
19 person may not be appointed from an eligibility list. When a person
20 has been on a reinstatement list for three years, the person shall
21 be dropped from the list but shall be restored to the list at the
22 request of the commission.

23 Sec. 158.186. POLITICAL ACTIVITIES. (a) While in uniform
24 or on active duty, an employee may not take an active part in
25 another person's political campaign for an elective position of the
26 county.

27 (b) For the purposes of this section, a person takes an

1 active part in a political campaign if the person:

2 (1) makes a political speech;

3 (2) distributes a card or other political literature;

4 (3) writes a letter;

5 (4) signs a petition;

6 (5) actively and openly solicits votes; or

7 (6) makes public derogatory remarks about a candidate
8 for an elective position of the county.

9 (c) An employee may not be required to contribute to a
10 political fund or to render a political service to a person or
11 party. An employee may not be removed, reduced in classification or
12 salary, or otherwise prejudiced for refusing to contribute to a
13 political fund or to render a political service.

14 (d) A county official who attempts to violate Subsection (c)
15 violates this subchapter.

16 (e) Except as expressly provided by this section, the
17 commission or the commissioners court may not restrict an
18 employee's right to engage in a political activity.

19 Sec. 158.187. STRIKE PROHIBITION. (a) An employee may not
20 engage in a strike against the county that employs the employee.

21 (b) In addition to the penalty prescribed by Section
22 158.115, if an employee is convicted of an offense for violating
23 this section, the person shall be automatically released and
24 discharged from the department. After the person is discharged
25 from the department, the person may not receive any pay or
26 compensation from public funds used to support the department.

27 Sec. 158.188. UNLAWFUL RESIGNATION OR RETIREMENT. (a) A

1 person commits an offense if the person accepts money or anything of
2 value from another person in return for retiring or resigning from
3 the person's civil service position.

4 (b) A person commits an offense if the person gives money or
5 anything of value to another person in return for the other person's
6 retirement or resignation from the person's civil service position.

7 (c) An offense under this section is a Class A misdemeanor.

8 Sec. 158.189. PERSONNEL FILE. (a) The director or the
9 director's designee shall maintain a personnel file on each
10 employee. The personnel file must contain any letter, memorandum,
11 or document relating to:

12 (1) a commendation, congratulation, or honor bestowed
13 on the employee by a member of the public or by the employing
14 department for an action, duty, or activity that relates to the
15 person's official duties;

16 (2) any misconduct by the employee if the letter,
17 memorandum, or document is from the employing department and if the
18 misconduct resulted in disciplinary action by the employing
19 department in accordance with this chapter; and

20 (3) the periodic evaluation of the employee by a
21 supervisor.

22 (b) A letter, memorandum, or document relating to alleged
23 misconduct by the employee may not be placed in the person's
24 personnel file if the employing department determines that there is
25 insufficient evidence to sustain the charge of misconduct.

26 (c) A letter, memorandum, or document relating to
27 disciplinary action taken against the employee or to alleged

1 misconduct by the employee that is placed in the person's personnel
2 file as provided by Subsection (a)(2) shall be removed from the
3 employee's file if the commission finds that:

4 (1) the disciplinary action was taken without just
5 cause; or

6 (2) the charge of misconduct was not supported by
7 sufficient evidence.

8 (d) If a negative letter, memorandum, document, or other
9 notation of negative impact is included in an employee's personnel
10 file, the director or the director's designee shall, within 30 days
11 after the date of the inclusion, notify the affected employee. The
12 employee may, on or before the 15th day after the date of receipt of
13 the notification, file a written response to the negative letter,
14 memorandum, document, or other notation.

15 (e) The employee is entitled, on request, to a copy of any
16 letter, memorandum, or document placed in the person's personnel
17 file. The county may charge the employee a reasonable fee not to
18 exceed actual cost for any copies provided under this subsection.

19 (f) The director or the director's designee may not release
20 any information contained in an employee's personnel file without
21 first obtaining the person's written permission, unless the release
22 of the information is required by law.

23 (g) A department may maintain a personnel file on an
24 employee employed by the department for the department's use, but
25 the department may not release any information contained in the
26 department file to any agency or person requesting information
27 relating to an employee. The department shall refer to the director

1 or the director's designee a person or agency that requests
2 information that is maintained in the employee's personnel file.

3 SECTION 2. The change in law made by Section 158.156, Local
4 Government Code, as added by this Act, applies only to an employee
5 who is indicted for a felony, charged with the commission of a Class
6 A or B misdemeanor, or charged with the violation of a civil service
7 rule based on an act classified as a felony or a Class A or B
8 misdemeanor on or after the effective date of this Act. An employee
9 who is indicted for a felony, charged with a Class A or B
10 misdemeanor, or charged with the violation of a civil service rule
11 based on an act classified as a felony or a Class A or B misdemeanor
12 before that date is covered by the law in effect when the employee
13 was indicted or charged, and the former law is continued in effect
14 for that purpose.

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