

By: Martinez

H.B. No. 2071

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 other notice requirements under this subchapter, a written notice for a demotion or disciplinary action 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, a deputy may appeal to an independent third-party hearing examiner instead of to the commission. The letter must state that if a deputy appeals to a hearing examiner, the deputy waives the right to appeal to district court except as provided by Subsection (j). Failure to provide notice under this subsection does not affect a deputy's right to appeal to an independent third-party hearing examiner under this section.

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

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

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

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

27       (f) In a hearing conducted under this section, the hearing

1 examiner has the same powers and duties as the commission,  
2 including any right to issue subpoenas.

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

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

16 (i) A party who loses an appeal is liable for the hearing  
17 examiner's fees and expenses. The costs of a witness are paid by  
18 the party who calls the witness.

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

26 SECTION 2. Subchapter B, Chapter 158, Local Government  
27 Code, is amended by adding Section 158.0375 to read as follows:

1       Sec. 158.0375. APPEAL TO HEARING EXAMINER BY DEPUTY  
2 SHERIFF. (a) In addition to other notice requirements under this  
3 subchapter, a written notice for a demotion or disciplinary action  
4 issued to a deputy sheriff must state that in an appeal of a  
5 termination or indefinite suspension, a suspension of not less than  
6 three days, or a recommended demotion, a deputy may appeal to an  
7 independent third-party hearing examiner instead of to the  
8 commission. The letter must state that if a deputy appeals to a  
9 hearing examiner, the deputy waives the right to appeal to district  
10 court except as provided by Subsection (j). Failure to provide  
11 notice under this subsection does not affect a deputy's right to  
12 appeal to an independent third-party hearing examiner under this  
13 section.

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

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

24       (d) If a deputy sheriff appeals to a hearing examiner, the  
25 deputy and the sheriff, or their designees, shall attempt to agree  
26 on the selection of an impartial hearing examiner. If the deputy  
27 and the sheriff do not agree on the selection of a hearing examiner

1 within 10 days after the date the appeal is filed, the commission  
2 shall request a list of seven qualified arbitrators from the  
3 American Arbitration Association or the Federal Mediation and  
4 Conciliation Service, or their successors in function. The deputy  
5 and the sheriff, or their designees, may agree on one of the seven  
6 arbitrators on the list. If the deputy and the sheriff do not agree  
7 within five business days after the date the list is received, the  
8 deputy and the sheriff, or their designees, shall alternate  
9 striking a name from the list and the name remaining is the hearing  
10 examiner. The deputy and the sheriff, or their designees, must  
11 agree on a date for the hearing.

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

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

21 (g) In a hearing conducted under this section, the deputy  
22 and the sheriff may agree to an expedited hearing procedure. Unless  
23 otherwise agreed to by the deputy and the sheriff, in an expedited  
24 procedure a hearing examiner shall render a decision on the appeal  
25 within 10 days after the date the hearing ends.

26 (h) In an appeal that does not involve an expedited hearing  
27 procedure, a hearing examiner shall make a reasonable effort to

1 render a decision on the appeal within 30 days after the date the  
2 hearing ends or the briefs are filed. A hearing examiner's  
3 inability to meet the time requirements imposed by this section  
4 does not affect the hearing examiner's jurisdiction, the validity  
5 of the disciplinary action, or the hearing examiner's final  
6 decision.

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

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

17 SECTION 3. The changes in law made by this Act apply only to  
18 an appeal to an independent third-party hearing examiner under  
19 Chapter 158, Local Government Code, as amended by this Act,  
20 following notice of demotion or disciplinary action given on or  
21 after the effective date of this Act. An appeal following notice  
22 given before the effective date of this Act is governed by the law  
23 in effect on the date the notice was given, and the former law is  
24 continued in effect for that purpose.

25 SECTION 4. This Act takes effect September 1, 2011.