

By: Martinez

H.B. No. 2430

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 INDEPENDENT THIRD-PARTY HEARING EXAMINER. (a) A commission by rule may authorize a deputy sheriff to appeal under this section to an independent third-party hearing examiner instead of to the commission a notice of a recommended demotion, a suspension of three days or more, or a termination. The deputy may not appeal unless the sheriff consents to the appeal.

(b) A written notice for a demotion or disciplinary action issued to a deputy sheriff must state that in an appeal of a recommended demotion, a suspension of three days or more, or a termination, the deputy may appeal to an independent third-party hearing examiner instead of to the commission with the consent of the sheriff. The notice must state that if the deputy appeals to a hearing examiner, the deputy waives the right to appeal to district court except as provided by Subsection (k).

(c) To appeal to a hearing examiner, a deputy sheriff must submit to the commission and the sheriff a written request as part of any original notice of appeal required under this subchapter stating the deputy's preference to appeal to an independent

1 third-party hearing examiner. Not later than the 10th day after the
2 date the sheriff receives the deputy's notice, the sheriff shall
3 notify the commission and the deputy in writing whether the sheriff
4 consents to the appeal to an independent third-party hearing
5 examiner.

6 (d) On appeal to a hearing examiner, the deputy and the
7 sheriff, or their designees, shall attempt to agree on the
8 selection of an impartial hearing examiner. If the deputy and the
9 sheriff do not agree on the selection of a hearing examiner within
10 10 days after the date the appeal is filed, the commission shall
11 request a list of seven qualified arbitrators from the American
12 Arbitration Association or the Federal Mediation and Conciliation
13 Service, or their successors in function. The deputy and the
14 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 or
24 the sheriff may, within two days after learning of that fact, call
25 for the selection of a new hearing examiner using the procedure
26 under 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, a hearing
6 examiner shall render a decision on the appeal in an expedited
7 procedure 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 hearing examiner's decision is final and binding on
20 all parties. A deputy sheriff who decides to appeal to an
21 independent third-party hearing examiner and the sheriff who
22 consents to the appeal waive the right to appeal to district court
23 except as provided by Subsection (k).

24 (k) A district court may hear an appeal of a hearing
25 examiner's award only on the grounds that the hearing examiner was
26 without jurisdiction or exceeded the hearing examiner's
27 jurisdiction or that the order was procured by fraud, collusion, or

1 other unlawful means. An appeal must be brought in the district
2 court having jurisdiction in the county in which the department is
3 located.

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

6 Sec. 158.0375. APPEAL TO INDEPENDENT THIRD-PARTY HEARING
7 EXAMINER. (a) A commission by rule may authorize a deputy sheriff
8 to appeal under this section to an independent third-party hearing
9 examiner instead of to the commission a notice of a recommended
10 demotion, a suspension of three days or more, or a termination. The
11 deputy may not appeal unless the sheriff consents to the appeal.

12 (b) A written notice for a demotion or disciplinary action
13 issued to a deputy sheriff must state that in an appeal of a
14 recommended demotion, a suspension of three days or more, or a
15 termination, the deputy may appeal to an independent third-party
16 hearing examiner instead of to the commission with the consent of
17 the sheriff. The notice must state that if the deputy appeals to a
18 hearing examiner, the deputy waives the right to appeal to district
19 court except as provided by Subsection (k).

20 (c) To appeal to a hearing examiner, a deputy sheriff must
21 submit to the commission and the sheriff a written request as part
22 of any original notice of appeal required under this subchapter
23 stating the deputy's preference to appeal to an independent
24 third-party hearing examiner. Not later than the 10th day after the
25 date the sheriff receives the deputy's notice, the sheriff shall
26 notify the commission and the deputy in writing whether the sheriff
27 consents to the appeal to an independent third-party hearing

1 examiner.

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

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

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

26 (g) In a hearing conducted under this section, the deputy
 27 and the sheriff may agree to an expedited hearing procedure. Unless

1 otherwise agreed to by the deputy and the sheriff, a hearing
2 examiner shall render a decision on the appeal in an expedited
3 procedure within 10 days after the date the hearing ends.

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

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

15 (j) A hearing examiner's decision is final and binding on
16 all parties. A deputy sheriff who decides to appeal to an
17 independent third-party hearing examiner and the sheriff who
18 consents to the appeal waive the right to appeal to district court
19 except as provided by Subsection (k).

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

27 SECTION 3. The changes in law made by this Act apply only to

1 an appeal to an independent third-party hearing examiner under
2 Chapter 158, Local Government Code, as amended by this Act,
3 following notice of demotion or disciplinary action given on or
4 after the effective date of this Act. An appeal following notice
5 given before the effective date of this Act is governed by the law
6 in effect on the date the notice was given, and the former law is
7 continued in effect for that purpose.

8 SECTION 4. This Act takes effect September 1, 2013.