

By: Lucio III

H.B. No. 3752

A BILL TO BE ENTITLED

AN ACT

1
2 relating to an appeal by certain law enforcement agency employees
3 under county civil service to an independent third-party hearing
4 examiner.

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

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

8 Sec. 158.0125. APPEAL TO HEARING EXAMINER BY LAW
9 ENFORCEMENT AGENCY EMPLOYEE. (a) In this section, "law
10 enforcement agency employee" means a person subject to a civil
11 service system created under this subchapter who is an employee of a
12 sheriff's or constable's department.

13 (b) In addition to other notice requirements under this
14 subchapter, a written notice for a demotion or disciplinary action
15 issued to a law enforcement agency employee must state that in an
16 appeal of a termination or indefinite suspension, a suspension of
17 not less than three days, or a recommended demotion, the employee
18 may appeal to an independent third-party hearing examiner instead
19 of to the commission. The letter must state that if the employee
20 appeals to a hearing examiner, the employee waives the right to
21 appeal to district court except as provided by Subsection (k).
22 Failure to provide notice under this subsection does not affect the
23 employee's right to appeal to an independent third-party hearing
24 examiner under this section.

1 (c) To appeal to a hearing examiner, a law enforcement
2 agency employee must submit to the commission a written request as
3 part of any original notice of appeal required under this
4 subchapter stating the employee's decision to appeal to an
5 independent third-party hearing examiner.

6 (d) A hearing examiner's decision is final and binding on
7 all parties. If a law enforcement agency employee decides to appeal
8 to an independent third-party hearing examiner, the employee waives
9 the right to appeal to district court except as provided by
10 Subsection (k).

11 (e) If a law enforcement agency employee appeals to a
12 hearing examiner, the employee and the sheriff or constable, as
13 applicable, or their designees, shall attempt to agree on the
14 selection of an impartial hearing examiner. If the parties do not
15 agree on the selection of a hearing examiner within 10 days after
16 the date the appeal is filed, the commission shall immediately
17 request a list of seven qualified and neutral arbitrators from the
18 American Arbitration Association or the Federal Mediation and
19 Conciliation Service, or their successors in function. The
20 parties, or their designees, may agree on one of the seven
21 arbitrators on the list. If the parties do not agree within five
22 business days after the date the list is received, the parties, or
23 their designees, shall alternate striking a name from the list and
24 the name remaining is the hearing examiner. The parties, or their
25 designees, must agree on a date for the hearing.

26 (f) An appeal hearing shall begin as soon as a hearing
27 examiner can be scheduled. If a hearing examiner cannot begin the

1 hearing within 45 days after the date of selection, the employee
2 may, within two days after learning of that fact, call for the
3 selection of a new hearing examiner using the procedure under
4 Subsection (e).

5 (g) In a hearing conducted under this section, the hearing
6 examiner has the same powers and duties as the commission,
7 including any right to issue subpoenas.

8 (h) In a hearing conducted under this section, the parties
9 may agree to an expedited hearing procedure. Unless otherwise
10 agreed to by the parties, in an expedited procedure a hearing
11 examiner shall render a decision on the appeal within 10 days after
12 the date the hearing ends.

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

21 (j) The parties are jointly liable for the hearing
22 examiner's fees and expenses. The costs of a witness are paid by
23 the party who calls the witness.

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 HEARING EXAMINER BY SHERIFF'S
7 DEPARTMENT EMPLOYEE. (a) In addition to other notice requirements
8 under this subchapter, a written notice for a demotion or
9 disciplinary action issued to an employee must state that in an
10 appeal of a termination or indefinite suspension, a suspension of
11 not less than three days, or a recommended demotion, the employee
12 may appeal to an independent third-party hearing examiner instead
13 of to the commission. The letter must state that if the employee
14 appeals to a hearing examiner, the employee waives the right to
15 appeal to district court except as provided by Subsection (j).
16 Failure to provide notice under this subsection does not affect the
17 employee's right to appeal to an independent third-party hearing
18 examiner under this section.

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

23 (c) A hearing examiner's decision is final and binding on
24 all parties. If an employee decides to appeal to an independent
25 third-party hearing examiner, the employee waives the right to
26 appeal to district court except as provided by Subsection (j).

27 (d) If an employee appeals to a hearing examiner, the

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

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

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

24 (g) In a hearing conducted under this section, the employee
25 and the sheriff may agree to an expedited hearing procedure. Unless
26 otherwise agreed to by the employee and the sheriff, in an expedited
27 procedure a hearing examiner shall render a decision on the appeal

1 within 10 days after the date the hearing ends.

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

10 (i) The parties are jointly liable for the hearing
11 examiner's fees and expenses. The costs of a witness are paid by
12 the party who calls the witness.

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

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

1 SECTION 4. This Act takes effect September 1, 2015.