86R8150 MP-F

By:  Martinez H.B. No. 2090

A BILL TO BE ENTITLED

AN ACT

relating to deputy sheriff civil service appeals of certain sheriff's department actions.

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. DEPUTY SHERIFF APPEAL TO INDEPENDENT HEARING EXAMINER

Sec. 158.101.  DEFINITION. In this subchapter, "commission" means the civil service commission appointed to administer the applicable civil service system.

Sec. 158.102.  APPLICABILITY OF SUBCHAPTER.  This subchapter applies to a civil service system created under this chapter that covers deputy sheriffs.

Sec. 158.103.  AUTHORITY TO APPEAL TO INDEPENDENT EXAMINER; REPEAL OF AUTHORITY. (a) If authorized to do so by an order of the commissioners court, a commission by rule may authorize deputy sheriffs to appeal under this subchapter to an independent hearing examiner instead of to the commission the following employment actions:

(1)  a recommended demotion;

(2)  a suspension of three days or more; or

(3)  a termination.

(b)  A commissioners court may repeal the order authorizing appeals to a hearing examiner under Subsection (a) at any time. If the commissioners court repeals the order, any pending appeal is governed by this subchapter until final resolution of the appeal.

Sec. 158.104.  REQUIRED NOTICE OF HEARING EXAMINER APPEAL. 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 hearing examiner instead of to the commission. 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 Section 158.111(b).

Sec. 158.105.  REQUEST FOR HEARING EXAMINER APPEAL. 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 the commission's rules stating the deputy's preference to appeal to an independent hearing examiner.

Sec. 158.106.  SELECTION OF HEARING EXAMINER. (a) On a request under Section 158.105, the deputy sheriff and the sheriff, or their designees, shall attempt to agree on the selection of an impartial hearing examiner.

(b)  If the deputy and the sheriff do not agree on the selection of a hearing examiner within 10 days after the date the appeal is filed, the commission shall request a list of seven qualified arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service, or their successors in function.

(c)  The deputy and the sheriff, or their designees, may agree on one of the seven arbitrators on the list described by Subsection (b). If the deputy and the sheriff do not agree within five business days after the date the list is received, the deputy and the sheriff, or their designees, shall alternate striking a name from the list and the name remaining is the hearing examiner.

Sec. 158.107.  DATE OF HEARING. (a) The deputy sheriff and the sheriff, or their designees, must agree on a date for an appeal hearing conducted under this subchapter.

(b)  An appeal hearing must begin as soon as a hearing examiner can be scheduled. If a hearing examiner cannot begin the hearing within 45 days after the date of selection, the deputy or the sheriff may, within two days after learning of that fact, call for the selection of a new hearing examiner using the procedure under Section 158.106.

Sec. 158.108.  POWERS OF HEARING EXAMINER. In an appeal hearing conducted under this subchapter, the hearing examiner has the same powers and duties as the commission, including any right to issue subpoenas.

Sec. 158.109.  DECISION DEADLINE. (a) In an appeal hearing conducted under this subchapter, the deputy sheriff and the sheriff may agree to an expedited hearing procedure. Unless otherwise agreed to by the deputy and the sheriff, a hearing examiner shall render a decision on the appeal in an expedited procedure within 10 days after the date the hearing ends.

(b)  In an appeal that does not involve an expedited hearing procedure, a hearing examiner shall make a reasonable effort to render a decision on the appeal within 30 days after the date the hearing ends or the briefs are filed.

(c)  A hearing examiner's inability to meet the time requirements imposed by this subchapter does not affect the hearing examiner's jurisdiction, the validity of the disciplinary action, or the hearing examiner's final decision.

Sec. 158.110.  COSTS OF HEARING. (a) A party who loses an appeal is liable for the hearing examiner's fees and expenses.

(b)  The costs of a witness are paid by the party who calls the witness.

Sec. 158.111.  APPEAL OF DECISION. (a) A hearing examiner's decision is final and binding on all parties. A deputy sheriff who decides to appeal to an independent hearing examiner waives the right to appeal to district court except as provided by Subsection (b).

(b)  A district court may hear an appeal of a hearing examiner's award only on the grounds that the hearing examiner was without jurisdiction or exceeded the hearing examiner's jurisdiction or that the order was procured by fraud, collusion, or other unlawful means. An appeal must be brought in the district court having jurisdiction in the county.

SECTION 2.  This Act takes effect September 1, 2019.