86R12282 JCG-D

By:  Muñoz, Jr. H.B. No. 3894

A BILL TO BE ENTITLED

AN ACT

relating to sheriff's department civil service systems in certain counties; creating criminal offenses.

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

SECTION 1.  Section 158.034, Local Government Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e)  To be eligible for appointment to the commission, a person must:

(1)  be at least 25 years old; [~~and~~]

(2)  have resided in the county for the three years immediately preceding the date on which the person's term will begin;

(3)  be a United States citizen;

(4)  be of good moral character;

(5)  not have held a public office in the three years immediately preceding the date on which the person's term will begin; and

(6)  not have served on the commission for more than six years.

(f)  Subsection (e)(5) does not prohibit the appointment of a member if the only public office held by the member in the preceding three years is membership on the commission.

SECTION 2.  Subchapter B, Chapter 158, Local Government Code, is amended by adding Sections 158.0341 through 158.0344, 158.0352, and 158.0353 to read as follows:

Sec. 158.0341.  REMOVAL OF COMMISSION MEMBER. (a) If at a meeting held for that purpose the commissioners court of the county finds that a commission member is guilty of misconduct in office, the commissioners court may remove the member. The member may request that the meeting be held as an open hearing in accordance with Chapter 551, Government Code.

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

(c)  The commissioners court may appoint a substitute commission member during a period of suspension.

(d)  If a commission member pleads guilty to or is found to be guilty of a criminal offense involving moral turpitude, the commissioners court shall appoint a replacement commission member to serve the remainder of the disqualified member's term of office.

Sec. 158.0342.  COMMISSION INVESTIGATIONS AND INSPECTIONS. (a) The commission or a commission member designated by the commission may investigate and report on all matters relating to the enforcement and effect of this subchapter and any rules adopted under this subchapter and shall determine if the subchapter and rules are being obeyed.

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

(1)  administer oaths;

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

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

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

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

(e)  A person who fails to respond to a subpoena issued under this section commits an offense punishable as prescribed by Section 158.0343.

Sec. 158.0343.  CRIMINAL PENALTY FOR VIOLATION OF SUBCHAPTER. (a) A person subject to the provisions of this subchapter commits an offense if the person violates this subchapter.

(b)  An offense under this section is a misdemeanor punishable by a fine of not less than $10 or more than $1,000, confinement in the county jail for not more than 30 days, or both fine and confinement.

Sec. 158.0344.  DECISIONS AND RECORDS. (a) Each concurring commission member shall sign a decision issued by the commission.

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

(c)  Each rule, opinion, directive, decision, or order issued by the commission:

(1)  must be in writing; and

(2)  is a public record that the commission shall retain on file.

Sec. 158.0352.  DISCIPLINARY SUSPENSIONS. (a) The sheriff may suspend an employee for the violation of a civil service rule. The suspension may be for a reasonable period not to exceed 15 calendar days or for an indefinite period. An indefinite suspension is equivalent to dismissal from the department.

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

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

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

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

(f)  If offered by the sheriff, the employee may agree in writing to voluntarily accept, with no right of appeal, a suspension of 16 to 90 calendar days for the violation of a civil service rule. The employee must accept the offer within five working days after the date the offer is made. If the employee refuses the offer and wants to appeal to the commission, the employee must file a written appeal with the commission in accordance with Section 158.037.

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

(1)  the sheriff may not complain of an act that is discovered earlier than the 180th day preceding the date the sheriff suspends the employee; and

(2)  the sheriff must allege that the act complained of is related to criminal activity.

Sec. 158.0353.  DEMOTIONS. (a) The sheriff may recommend to the commission in writing that the commission demote a nonexempt employee involuntarily.

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

(c)  The commission may refuse to grant the request for demotion. If the commission believes that probable cause exists for ordering the demotion, the commission shall give the employee written notice to appear before the commission for a public hearing at a time and place specified in the notice. The commission shall give the notice before the 10th day before the date the hearing will be held.

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

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

SECTION 3.  Section 158.037, Local Government Code, is amended to read as follows:

Sec. 158.037.  APPEALS. (a) Except as otherwise provided by this subchapter, an employee may appeal to the commission an action for which an appeal or review is provided by this subchapter by filing an appeal with the commission within 10 days after the date the action occurred.

(b)  The appeal must include the basis for the appeal and a request for a commission hearing. The appeal must also contain:

(1)  a statement denying the truth of the charge as made;

(2)  a statement taking exception to the legal sufficiency of the charge;

(3)  a statement alleging that the recommended action does not fit the offense or alleged offense; or

(4)  a combination of the statements described by this subsection.

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

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

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

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

(g)  The commission shall conduct the hearing fairly and impartially as prescribed by this subchapter and shall render a just and fair decision. The commission may consider only the evidence submitted at the hearing.

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

(i)  If a suspended employee appeals a suspension to the commission, the commission shall hold a hearing and render a decision in writing within 30 days after the date the commission receives notice of appeal. The suspended employee and the commission may agree to postpone the hearing for a definite period.

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

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

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

(m)  In its decision, the commission shall state whether the suspended employee is:

(1)  permanently dismissed from the department;

(2)  temporarily suspended from the department; or

(3)  restored to the employee's former position or status in the department's classified service.

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

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

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

(o)  An employee who, on a final decision by the commission, is demoted, suspended, or removed from a position may appeal the decision by filing a petition in a district court in the county within 30 days after the date of the decision.

(p) [~~(b)~~]  An appeal under Subsection (o) [~~this section~~] is under the substantial evidence rule, and the judgment of the district court is appealable as in other civil cases.

(q)  Each appeal to a district court of an indefinite suspension shall be advanced on the district court docket and given a preference setting over all other cases.

(r) [~~(c)~~]  If the district court renders judgment for the petitioner, the court may order reinstatement of the employee, payment of back pay, or other appropriate relief.

SECTION 4.  Subchapter B, Chapter 158, Local Government Code, is amended by adding Sections 158.0372 through 158.0374 and Sections 158.041 through 158.062 to read as follows:

Sec. 158.0372.  REINSTATEMENT. (a) If the commission, a hearing examiner, or a district court orders that an employee suspended without pay be reinstated, the sheriff shall comply with the order and the county shall, before the end of the second full pay period after the date the employee is reinstated, repay to the employee all wages lost as a result of the suspension.

(b)  If the county does not fully repay all lost wages to the employee as provided by this section, the county shall pay the employee an amount equal to the lost wages plus accrued interest.

(c)  Interest under Subsection (b) accrues beginning on the date of the employee's reinstatement at a rate equal to three percent plus the rate for court judgments under Chapter 304, Finance Code, that is in effect on the date of the employee's reinstatement.

Sec. 158.0373.  HEARING EXAMINERS. (a) In addition to the other notice requirements prescribed by this subchapter, the written notice for a promotional bypass, demotion, or notice of disciplinary action, as applicable, issued to an employee must state that in an appeal of an indefinite suspension, a suspension, a promotional bypass, or a recommended demotion, the appealing employee may elect to appeal to an independent third-party hearing examiner instead of to the commission. The letter must also state that if the employee elects to appeal to a hearing examiner, the employee waives all rights to appeal to a district court except as provided by Subsection (j).

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

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

(d)  If the employee chooses to appeal to a hearing examiner, the employee and the sheriff, or their designees, shall first attempt to agree on the selection of an impartial hearing examiner. If the parties do not agree on the selection of a hearing examiner on or within 10 days after the date the appeal is filed, the commission shall immediately request a list of seven qualified neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service, or their successors in function. The employee and the sheriff, or their designees, may agree on one of the seven neutral arbitrators on the list. If they do not agree within five working days after the date they received the list, each party or the party's designee shall alternate striking a name from the list and the name remaining is the hearing examiner. The parties or their designees shall agree on a date for the hearing.

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

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

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

(h)  In an appeal that does not involve an expedited hearing procedure, the 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. The hearing examiner's inability to meet the time requirements imposed by this section does not affect the hearing examiner's jurisdiction, the validity of the disciplinary action, or the hearing examiner's final decision.

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

(j)  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 in which the department is located.

Sec. 158.0374.  UNCOMPENSATED DUTY. (a) In this section, "uncompensated duty" means days of work without pay that are in addition to regular or normal workdays.

(b)  The sheriff may assign an employee to uncompensated duty. The sheriff may not impose uncompensated duty unless the employee agrees to accept the duty. The sheriff shall give the employee a written statement that specifies the date or dates on which the employee will perform uncompensated duty if the employee agrees to accept uncompensated duty.

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

(d)  An employee may not earn or accrue any wage, salary, or benefit arising from length of service while the employee is suspended without pay or performing uncompensated duty. The days on which an employee performs assigned uncompensated duty may not be taken into consideration in determining eligibility for a promotional examination.

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

Sec. 158.041.  PROMOTIONAL EXAMINATION NOTICE. (a) Not later than the 90th day before the date a promotional examination is held, the commission shall post a notice that lists the sources from which the examination questions will be taken.

(b)  Not later than the 30th day before the date a promotional examination is held, the commission shall post a notice of the examination in plain view on a bulletin board located in the main lobby of the sheriff's department and in the commission's office. The notice must show the position to be filled or for which the examination is to be held, and the date, time, and place of the examination. The commission shall also furnish sufficient copies of the notice for posting in the stations or subdepartments in which the position will be filled.

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

Sec. 158.042.  ELIGIBILITY FOR PROMOTIONAL EXAMINATION. (a) Each promotional examination is open to each employee who for at least two years immediately before the examination date has continuously held a position in the classification that is immediately below, in salary, the classification for which the examination is to be held.

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

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

Sec. 158.043.  PROMOTIONAL EXAMINATION PROCEDURE; CRIMINAL PENALTY. (a) The commission shall adopt rules governing promotions and shall hold promotional examinations to provide eligibility lists for each nonexempt classification in the department. The examinations shall be held substantially as prescribed by this section.

(b)  Each eligible promotional candidate shall be given an identical examination in the presence of the other eligible promotional candidates, except that an eligible promotional candidate who is serving on active military duty outside of this state or in a location that is not within reasonable geographic proximity to the location where the examination is being administered is entitled to take the examination outside of the presence of and at a different time than the other candidates and may be allowed to take an examination that is not identical to the examination administered to the other candidates. The commission may adopt rules providing for the efficient administration of promotional examinations to eligible promotional candidates who are members of the armed forces serving on active military duty. In adopting the rules, the commission shall ensure that the administration of the examination will not result in unnecessary interference with any ongoing military effort. The rules must require that:

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

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

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

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

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

(2)  material that is of reasonably current publication and that has been made reasonably available to each employee involved in the examination; and

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

(e)  The examination questions must be taken from the sources listed in the posted notice under Section 158.041(a). Employees may suggest source materials for the examinations.

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

(g)  The commission is responsible for the preparation and security of each promotional examination. The fairness of the competitive promotional examination is the responsibility of the commission and each county employee involved in the preparation or administration of the examination.

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

(1)  reveals a part of a promotional examination to an unauthorized person for unfair personal gain or advantage; or

(2)  receives from any person a part of a promotional examination for unfair personal gain or advantage.

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

Sec. 158.044.  PROMOTIONAL EXAMINATION GRADES. (a) The grading of each promotional examination shall begin when one eligible promotional candidate completes the examination. As the eligible promotional candidates finish the examination, the examinations shall be graded at the examination location and in the presence of any candidate who wants to remain during the grading.

(b)  Each employee is entitled to receive one point for each year of seniority as a classified employee in the department, with a maximum of 10 points.

(c)  The grade that must be placed on the eligibility list for each employee shall be computed by adding the applicant's points for seniority to the applicant's grade on the written examination, but only if the applicant scores a passing grade on the written examination. Each applicant's grade on the written examination is based on a maximum grade of 100 points and is determined entirely by the correctness of the applicant's answers to the questions. All applicants who receive a grade on the written examination of at least 70 points shall be determined to have passed the examination. If a tie score occurs, the commission shall determine a method to break the tie.

(d)  Within 24 hours after a promotional examination is given, the commission shall post the individual raw test scores on a bulletin board located in the main lobby of the sheriff's department.

Sec. 158.045.  REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION. (a) On request, each eligible promotional candidate is entitled to examine the person's promotional examination and answers, the examination grading, and the source material for the examination. If dissatisfied, the candidate may appeal, within seven days, to the commission for review in accordance with this subchapter.

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

Sec. 158.046.  PROCEDURE FOR MAKING PROMOTIONAL APPOINTMENTS. (a) When a vacancy occurs in a nonentry, nonexempt position, the vacancy shall be filled as prescribed by this section. A vacancy in a position described by this subsection occurs on the date the position is vacated by:

(1)  resignation;

(2)  retirement;

(3)  death;

(4)  promotion; or

(5)  an indefinite suspension that becomes final.

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

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

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

(e)  If an eligibility list exists on the date a vacancy occurs, the sheriff shall fill the vacancy by permanent appointment from the eligibility list furnished by the commission within 60 days after the date the vacancy occurs. If an eligibility list does not exist, the sheriff shall fill the vacancy by permanent appointment from an eligibility list that the commission shall provide within 90 days after the date the vacancy occurs.

(f)  Unless the sheriff has a valid reason for not appointing the candidate, the sheriff shall appoint the eligible promotional candidate having the highest grade on the eligibility list. If the sheriff has a valid reason for not appointing the eligible promotional candidate having the highest grade, the sheriff shall personally discuss the reason with the candidate being bypassed before appointing another candidate. The sheriff shall also file the reason in writing with the commission and shall provide the candidate with a copy of the written notice. The bypassed promotional candidate may appeal the decision in accordance with Section 158.037.

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

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

Sec. 158.047.  TEMPORARY DUTIES IN HIGHER CLASSIFICATION. (a) When a vacancy occurs, the sheriff may designate an employee from the next lower classification to temporarily fill a position in a higher classification. The designated employee is entitled to the base salary of the higher position plus the employee's own longevity or seniority pay, educational incentive pay, if any, and certification pay, if any, during the time the employee performs the duties.

(b)  The temporary performance of the duties of a higher position by an employee who has not been promoted as prescribed by this chapter may not be construed as a promotion.

Sec. 158.048.  LEAVES OF ABSENCE; RESTRICTION PROHIBITED. (a) If a sufficient number of employees are available to carry out the normal functions of the department, an employee may not be refused a reasonable leave of absence without pay to attend a school, convention, or meeting if the purpose of the school, convention, or meeting is to secure a more efficient department and better working conditions for department personnel.

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

Sec. 158.049.  MILITARY LEAVE OF ABSENCE. (a) On written application of an employee, the commission shall grant the employee a military leave of absence without pay, notwithstanding Section 158.050, to enable the employee to enter a branch of the United States military service. The leave of absence may not exceed the period of compulsory military service or the basic minimum enlistment period for the branch of service the employee enters.

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

(c)  While an employee serves in the military, the commission shall fill the employee's position in the department in accordance with this subchapter. The employee who fills the position is subject to replacement by the employee who received the military leave at the time the employee returns to active duty in the department.

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

(1)  receives an honorable discharge;

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

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

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

(f)  If the reinstatement of an employee causes that employee's replacement to be returned to a lower position in grade or compensation, the replaced employee has a preferential right to a subsequent appointment or promotion to the same or a similar position from which the employee was demoted. This preferential right has priority over an eligibility list and is subject to the replaced employee remaining physically and mentally fit to discharge the duties of that position.

(g)  If an employee is called to active military duty for any period, the county must continue to maintain any health, dental, or life insurance coverage and any health or dental benefits coverage that the employee received from the county on the date the employee was called to active military duty until the county receives written instructions from the employee to change or discontinue the coverage.

(h)  In addition to other procedures prescribed by this section, an employee may, without restriction as to the amount of time, voluntarily substitute for another employee who has been called to active federal military duty for a period expected to last 12 months or longer. An employee who voluntarily substitutes under this subsection must be qualified to perform the duties of the absent employee.

Sec. 158.050.  MILITARY LEAVE TIME ACCOUNTS. (a) A county shall maintain a military leave time account for the sheriff's department.

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

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

(2)  was called to active federal military duty while serving as an employee for the sheriff's department;

(3)  has served on active duty for a period of at least 12 continuous months; and

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

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

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

Sec. 158.051.  LINE OF DUTY ILLNESS OR INJURY LEAVE OF ABSENCE. (a) A county shall provide to an employee a leave of absence for an illness or injury related to the employee's activities performed in the line of duty. The leave is with full pay for a period commensurate with the nature of the line of duty illness or injury. If necessary, the leave shall continue for at least one year.

(b)  At the end of the one-year period, the county's governing body may extend the line of duty illness or injury leave at full or reduced pay. If the employee's leave is not extended or the employee's salary is reduced below 60 percent of the employee's regular monthly salary, and the employee is a member of a pension fund, the employee may retire on pension until the employee is able to return to duty.

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

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

(e)  After recovery from a temporary disability, an employee shall be reinstated at the same rank and with the same seniority the employee had before going on temporary leave.

(f)  While an employee who is temporarily disabled is on leave, another employee may voluntarily do the work of the employee who is temporarily disabled or donate leave time to maintain the salary for the employee who is temporarily disabled until the temporarily disabled employee returns to duty.

Sec. 158.052.  REAPPOINTMENT AFTER RECOVERY FROM DISABILITY. With the commission's approval and if otherwise qualified, an employee who has been certified by a physician selected by a pension fund as having recovered from a disability for which the employee has been receiving a monthly disability pension is eligible for reappointment to the classified position that the employee held on the date the employee qualified for the monthly disability pension.

Sec. 158.053.  PERSONNEL FILE. (a) The commission or the commission's designee shall maintain a personnel file on each employee. The personnel file must contain any letter, memorandum, or document relating to:

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

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

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

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

(c)  A letter, memorandum, or document relating to disciplinary action taken against the employee or to alleged misconduct by the employee that is placed in the employee's personnel file as provided by Subsection (a)(2) shall be removed from the employee's file if the commission finds that:

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

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

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

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

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

(g)  The department may maintain a personnel file on an employee for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to the employee. The department shall refer to the commission or the commission's designee a person or agency that requests information that is maintained in the employee's personnel file.

Sec. 158.054.  INVESTIGATION OF EMPLOYEES. (a) In this section:

(1)  "Complainant" means a person claiming to be the victim of misconduct by an employee.

(2)  "Investigation" means an administrative investigation, conducted by the county, of alleged misconduct by an employee that could result in punitive action against that employee.

(3)  "Investigator" means an agent or employee of the county who is assigned to conduct an investigation.

(4)  "Normally assigned working hours" includes those hours during which an employee is actually at work or at the employee's assigned place of work, but does not include any time when the employee is off duty on authorized leave, including sick leave.

(5)  "Punitive action" means a disciplinary suspension, indefinite suspension, demotion in rank, reprimand, or any combination of those actions.

(b)  An investigator may interrogate an employee who is the subject of an investigation only during the employee's normally assigned working hours unless:

(1)  the seriousness of the investigation, as determined by the sheriff or the sheriff's designee, requires interrogation at another time; and

(2)  the employee is compensated for the interrogation time on an overtime basis.

(c)  The sheriff may not consider work time missed from regular duties by an employee due to participation in the conduct of an investigation in determining whether to impose a punitive action or in determining the severity of a punitive action.

(d)  An investigator may not interrogate an employee who is the subject of an investigation or conduct any part of the investigation at that employee's home without that employee's permission.

(e)  A person may not be assigned to conduct an investigation if the person is the complainant, the ultimate decision maker regarding disciplinary action, or a person who has any personal involvement regarding the alleged misconduct. An employee who is the subject of an investigation has the right to inquire and, on inquiry, to be informed of the identities of each investigator participating in an interrogation of the employee.

(f)  Before an investigator may interrogate an employee who is the subject of an investigation, the investigator must inform the employee in writing of the nature of the investigation and the name of each person who complained about the employee concerning the matters under investigation. An investigator may not conduct an interrogation of an employee based on a complaint by a complainant who is not a peace officer unless the complainant verifies the complaint in writing before a public officer who is authorized by law to take statements under oath. In an investigation authorized under this subsection, an investigator may interrogate an employee about events or conduct reported by a witness who is not a complainant without disclosing the name of the witness. Not later than the 48th hour before the hour on which an investigator begins to interrogate an employee regarding an allegation based on a complaint, affidavit, or statement, the investigator shall give the employee a copy of the affidavit, complaint, or statement. An interrogation may be based on a complaint from an anonymous complainant if the departmental employee receiving the anonymous complaint certifies in writing, under oath, that the complaint was anonymous. This subsection does not apply to an on-the-scene investigation that occurs immediately after an incident being investigated if the limitations of this subsection would unreasonably hinder the essential purpose of the investigation or interrogation. If the limitation would hinder the investigation or interrogation, the employee under investigation must be furnished, as soon as practicable, a written statement of the nature of the investigation, the name of each complaining party, and the complaint, affidavit, or statement.

(g)  An interrogation session of an employee who is the subject of an investigation may not be unreasonably long. In determining reasonableness, the gravity and complexity of the investigation must be considered. The investigators shall allow reasonable interruptions to permit the employee to attend to personal physical necessities.

(h)  An investigator may not threaten an employee who is the subject of an investigation with punitive action during an interrogation. However, an investigator may inform an employee that failure to truthfully answer reasonable questions directly related to the investigation or to fully cooperate in the conduct of the investigation may result in punitive action.

(i)  If prior notification of intent to record an interrogation is given to the other party, either the investigator or the employee who is the subject of an interrogation may record the interrogation.

(j)  If an investigation does not result in punitive action against an employee but does result in a reprimand recorded in writing or an adverse finding or determination regarding that employee, the reprimand, finding, or determination may not be placed in that employee's personnel file unless the employee is first given an opportunity to read and sign the document. If the employee refuses to sign the reprimand, finding, or determination, it may be placed in the personnel file with a notation that the employee refused to sign it. An employee may respond in writing to a reprimand, finding, or determination that is placed in the employee's personnel file under this subsection by submitting a written response to the commission within 10 days after the date the employee is asked to sign the document. The response must be placed in the personnel file. An employee who receives a punitive action and who elects not to appeal the action may file a written response as prescribed by this subsection within 10 days after the date the employee is given written notice of the punitive action from the sheriff.

(k)  If the sheriff or any investigator violates any of the provisions of this section while conducting an investigation, the commission shall reverse any punitive action taken pursuant to the investigation, including a reprimand, and any information obtained during the investigation shall be specifically excluded from introduction into evidence in any proceeding against the employee.

Sec. 158.055.  GRIEVANCE PROCEDURE. (a) An employee may file a grievance as provided by this subchapter. The employee may file a grievance that relates to the employee's employment, including matters relating to a written or oral reprimand, transfers, job performance reviews, and job assignments. The employee may not file a grievance relating to:

(1)  a disciplinary suspension, indefinite suspension, promotional pass over, or demotion or other action or decision for which a hearing, review, or appeal is otherwise provided by this subchapter; or

(2)  an allegation of discrimination based, in whole or in part, on race, color, religion, sex, or national origin.

(b)  The commission shall monitor and assist the operation of the grievance procedure. The commission's duties include:

(1)  aiding the department and departmental grievance counselors;

(2)  notifying the parties of meetings;

(3)  docketing cases before the grievance examiner; and

(4)  ensuring that the grievance procedure operates timely and effectively.

(c)  The sheriff shall appoint from among the members of the department a grievance counselor whose duties include:

(1)  providing appropriate grievance forms to an employee;

(2)  accepting, on behalf of the sheriff, a step I or II grievance;

(3)  assisting the employee in handling the grievance;

(4)  forwarding a copy of a step I or II grievance form to the commission and notifying the sheriff;

(5)  arranging a meeting between the employee and that employee's immediate supervisor as prescribed by Section 158.056(b);

(6)  arranging a meeting described by Section 158.057(b); and

(7)  performing other duties that the sheriff may assign.

(d)  The grievance procedure consists of four steps. In any step of the grievance process in which the aggrieved employee's immediate supervisor is included, the sheriff or the departmental grievance counselor may add an appropriate supervisor who is not the employee's immediate supervisor or may designate that supervisor to replace the employee's immediate supervisor, if the sheriff or grievance counselor determines that the other supervisor has the authority to resolve the employee's grievance.

Sec. 158.056.  STEP I GRIEVANCE PROCEDURE. (a) To begin a grievance action, an employee must file a completed written step I grievance form with the departmental grievance counselor within 30 days after the date the action or inaction for which the employee feels aggrieved occurred. A step I grievance form may be obtained from the departmental grievance counselor. If the form is not timely filed, the grievance is waived.

(b)  If the step I grievance form is timely filed under Subsection (a), the departmental grievance counselor shall arrange a meeting of the employee, that employee's immediate supervisor or other appropriate supervisor or both, and the person or persons against whom the grievance is lodged. The departmental grievance counselor shall schedule the step I meeting within 30 calendar days after the date the form is filed. If the grievance is lodged against the sheriff, the sheriff may send a representative.

(c)  The employee's immediate supervisor or other appropriate supervisor, or both, shall fully, candidly, and openly discuss the grievance with the employee in a sincere attempt to resolve it.

(d)  Regardless of the outcome of the meeting, the employee's immediate supervisor or other appropriate supervisor, or both, shall provide a written response to the employee, with a copy to the grievance counselor, within 15 calendar days after the date the meeting occurs. The response must include the supervisor's evaluation and proposed solution. The response shall either be personally delivered to the employee or be mailed by certified mail, return receipt requested, to the last home address provided by that employee.

(e)  If the proposed solution is not acceptable, the employee may file a step II grievance form with the departmental grievance counselor in accordance with Section 158.057. If the aggrieved employee fails to timely file a step II grievance form, the solution is considered accepted.

Sec. 158.057.  STEP II GRIEVANCE PROCEDURE. (a) To continue the grievance procedure, the employee must complete a step II grievance form and file it with the sheriff or the departmental grievance counselor within 15 calendar days after the date the employee receives the supervisor's response under Section 158.056.

(b)  If the step II grievance form is timely filed under Subsection (a), the departmental grievance counselor shall arrange a meeting of the employee, that employee's immediate supervisor or other appropriate supervisor or both, and the sheriff or the sheriff's representative who must have a rank of at least captain or the equivalent. The meeting shall be held within 15 calendar days after the date the form is filed.

(c)  Regardless of the outcome of the meeting, the sheriff or the sheriff's representative shall provide a written response to the employee within 15 calendar days after the date the meeting occurs. The response shall either be personally delivered to the employee or be mailed by certified mail, return receipt requested, to the last home address provided by that employee.

(d)  If the proposed solution is not acceptable, the employee may either submit a written request stating the employee's decision to appeal to an independent third-party hearing examiner pursuant to the provisions of Section 158.0373 or file a step III grievance form with the director in accordance with Section 158.058. If the employee fails to timely file a step III grievance form or a written request to appeal to a hearing examiner, the solution is considered accepted. Notwithstanding Section 158.0373(i), if the employee prevails and the hearing examiner upholds the grievance in its entirety, the department shall bear the cost of the appeal to the hearing examiner. If the employee fails to prevail and the hearing examiner denies the grievance in its entirety, the employee shall bear the cost of the appeal to the hearing examiner. If neither party entirely prevails and the hearing examiner upholds part of the grievance and denies part of it, the hearing examiner's fees and expenses shall be shared equally by the employee and the department.

Sec. 158.058.  STEP III GRIEVANCE PROCEDURE. (a) To continue the grievance procedure, an employee who did not appeal to a hearing examiner under Section 158.057(d) must complete a step III grievance form and file it with the commission within 15 calendar days after the date the employee receives the sheriff's response under Section 158.057.

(b)  If the step III grievance form is timely filed under Subsection (a), the commission shall arrange a hearing of the employee and a grievance examiner to be appointed by the commission under Section 158.060. The hearing shall be held within 15 of the aggrieved employee's working days after the date the form is filed.

(c)  A hearing shall be conducted as an informal administrative procedure. Grievances arising out of the same or similar fact situations may be heard at the same hearing. A court reporter shall record the hearing. All witnesses shall be examined under oath. The employee, the employee's immediate supervisor or other appropriate supervisor or both, the sheriff or the sheriff's designated representative or both, and each person specifically named in the grievance are parties to the hearing. The burden of proof is on the aggrieved employee.

(d)  The grievance examiner shall make written findings and a recommendation for solution of the grievance within 15 calendar days after the date the hearing ends. The findings and recommendation shall be given to the commission and copies mailed to the employee by certified mail, return receipt requested, at the last home address provided by that employee, and to the sheriff.

(e)  If the proposed solution is not acceptable to either the employee or the sheriff, either party may file a step IV grievance form with the commission in accordance with Section 158.059. If the employee or the sheriff fails to timely file a step IV grievance form, the solution is considered accepted by that person.

Sec. 158.059.  STEP IV GRIEVANCE PROCEDURE. (a) If the sheriff or the employee rejects the proposed solution under Section 158.058, the sheriff, the sheriff's designated representative, or the employee must complete a step IV grievance form and file it with the commission within 15 calendar days after the date the person receives the grievance examiner's recommendation.

(b)  The commission shall review the grievance examiner's findings and recommendation and consider the transcript of the step III hearing at the commission's next regularly scheduled meeting or as soon as practicable. The transcript shall be filed within 30 days of the step IV grievance being filed. The commission may for good cause shown grant a reasonable delay not to exceed 30 days to file the transcript. In no event may the commission render a decision later than 30 days after the date the transcript is filed. If the commission does not render a decision within 30 days after the date the transcript is filed, the commission shall sustain the employee's grievance.

(c)  The commission shall base its decision solely on the transcript and demonstrative evidence offered and accepted at the step III hearing. The commission shall furnish a written copy of the order containing its decision to the employee, the sheriff, and the grievance examiner. The copy to the employee shall be mailed by certified mail, return receipt requested, to the last home address provided by that employee. The commission decision is final.

Sec. 158.060.  GRIEVANCE EXAMINER. (a) The commission shall appoint a grievance examiner by a majority vote. The commission may appoint more than one grievance examiner if necessary. The commission may appoint a different grievance examiner for each grievance. An examiner may not be affiliated with any other department and is responsible only to the commission. The commission shall pay an examiner from a special budget established for this purpose, and shall provide an examiner sufficient office space and clerical support.

(b)  The grievance examiner may:

(1)  impose a reasonable limit on the time allowed each party and the number of witnesses to be heard;

(2)  administer oaths;

(3)  examine a witness under oath;

(4)  subpoena and require the attendance of witnesses or the production of documents, books, or other pertinent material; and

(5)  accept affidavits instead of or in addition to live testimony.

Sec. 158.061.  SPECIAL PROVISIONS FOR STEPS I AND II. (a) If the aggrieved employee's immediate supervisor is the sheriff, the steps prescribed by Sections 158.056 and 158.057 are combined. The sheriff shall meet with the aggrieved employee and may not appoint a representative.

(b)  A sheriff, with the approval of the commission, may change the procedure prescribed by Sections 158.056 and 158.057 to reflect a change in a department's chain of command.

Sec. 158.062.  MISCELLANEOUS GRIEVANCE PROVISIONS. (a) An employee may, but is not required to, obtain a representative at any time during the grievance procedure. The county is not obligated to provide or pay the costs of providing representation. The representative:

(1)  is not required to be an attorney;

(2)  is entitled to be present to advise the employee;

(3)  is entitled to present any evidence or information for the employee; and

(4)  may not be prevented from fully participating in any of the grievance proceedings.

(b)  An employee may take reasonable time off from a job assignment to file a grievance and attend a meeting or hearing. Time taken to pursue a grievance may not be charged against that employee. The employee shall be compensated on an overtime basis for the time that employee spends at a grievance meeting or hearing if:

(1)  the meeting or hearing is scheduled at a time other than that employee's normally assigned working hours; and

(2)  that employee prevails in the grievance.

(c)  If notice that a grievance meeting or hearing is to be recorded is provided to all persons present at the meeting or hearing, the employee, the sheriff, or the sheriff's designee may record the meeting or hearing.

(d)  The commission shall provide a suitable notice explaining the grievance procedure prescribed by this subchapter and furnish copies to the department. The notice shall be posted in a prominent place or places within the department work areas to give reasonable notice of the grievance procedure to each member of the department.

(e)  At the request of the sheriff or an employee who has filed a grievance under this subchapter, the county's legal department or the commission shall assist in resolving the grievance.

(f)  The commission is the official final custodian of all records involving grievances. A depository for closed files regarding grievances shall be maintained by the commission.

(g)  An employee who files a grievance pursuant to this section and Sections 158.055 through 158.061 is entitled to 48 hours notice of any meeting or hearing scheduled under Section 158.056(b), 158.057(b), 158.058(b), or 158.059(b). In the event that the employee is not given 48 hours advance notice, the employee's grievance shall be automatically sustained and no further action may be had on the grievance.

(h)  If the decision of the commission under Section 158.059 or the decision of a hearing examiner under Section 158.057 that has become final is favorable to an employee, the sheriff shall implement the relief granted to the employee not later than the 10th day after the date on which the decision was issued. If the sheriff intentionally fails to implement the relief within the 10-day period, the county shall pay the employee $1,000 for each day after the 10-day period that the decision is not yet implemented.

SECTION 5.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.