

By: Perez

H.B. No. 2612

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a constable's department civil service system in certain counties; creating an offense.

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. CONSTABLE'S DEPARTMENT CIVIL SERVICE SYSTEM IN CERTAIN COUNTIES

Sec. 158.101. DEFINITIONS. In this subchapter:

(1) "Commission" means a civil service commission for all of a county's employees.

(2) "Department" means a constable's department.

(3) "Employee" means an employee of a department. The term includes a deputy constable.

Sec. 158.102. ELIGIBLE COUNTIES. A county with a population of more than 3.3 million may, in accordance with this subchapter, create a civil service system for all of the county's employees.

Sec. 158.103. ESTABLISHMENT BY PETITION AND ELECTION. (a) If at least 20 percent of a county's employees sign a petition requesting an election under this section and present the petition to the county judge, the judge shall order an election on the question of the creation of a civil service system for all employees in the county.

1 (b) The county judge shall hold the election after the 15th
2 day but on or before the 45th day after the date the petition is
3 submitted. The election must be by secret ballot and each employee
4 is entitled to vote at the election.

5 (c) The ballots for the election shall be printed to provide
6 for voting for or against the proposition: "Creation of a civil
7 service system for all constable's department employees in the
8 county."

9 (d) The county judge shall canvass the votes and declare the
10 result.

11 Sec. 158.104. ESTABLISHMENT BY ORDER. The commissioners
12 court of a county may by order create a civil service system for all
13 employees in the county.

14 Sec. 158.105. APPOINTMENT OF COMMISSION. (a) If a majority
15 of the employees voting at the election approve the creation of a
16 civil service system, each constable, the commissioners court, and
17 the district attorney shall each appoint one person to serve as a
18 member of the commission.

19 (b) The members of the commission shall elect one of the
20 members as chair of the commission.

21 (c) Each member of the commission is appointed for a term of
22 two years.

23 (d) The entity that appointed a member of the commission
24 whose position becomes vacant shall appoint a person to serve the
25 unexpired part of the member's term.

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

1 (1) be at least 25 years old; and

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

5 Sec. 158.106. POWERS OF COMMISSION. (a) The commission
6 shall adopt, publish, and enforce rules regarding:

7 (1) selection and classification of employees;

8 (2) competitive examinations;

9 (3) promotions, seniority, and tenure;

10 (4) layoffs and dismissals;

11 (5) disciplinary actions;

12 (6) grievance procedures;

13 (7) the rights of employees during an internal
14 investigation; and

15 (8) other matters relating to the selection of
16 employees and the procedural and substantive rights, advancement,
17 benefits, and working conditions of employees.

18 (b) The commission may adopt or use as a guide any civil
19 service law or rule of the United States, this state, or a political
20 subdivision in this state to the extent that the law or rule
21 promotes the purposes of this subchapter and is consistent with the
22 needs and circumstances of the departments.

23 (c) A panel of three commissioners shall preside at the
24 hearing and vote on the commission's final decision in any case
25 involving termination, demotion, or recovery of back pay. A panel's
26 decision is the final decision of the commission for purposes of
27 Sections 158.107 and 158.110. The commission shall adopt rules

1 prescribing the commission's procedures for assigning members to a
2 panel. A panel may not include the member who was appointed to the
3 commission by a constable when the hearing involves an employee
4 from that constable's department.

5 (d) In rendering a final decision regarding a disciplinary
6 action by the department, the commission may only sustain,
7 overturn, or reduce the disciplinary action. The commission may
8 not enhance a disciplinary action by the department.

9 Sec. 158.107. PROCEDURES AFTER FELONY INDICTMENT OR
10 MISDEMEANOR COMPLAINT. (a) If an employee is indicted for a felony
11 or officially charged with the commission of a Class A or B
12 misdemeanor, the constable may temporarily suspend the employee
13 with or without pay for a period not to exceed 30 days after the date
14 of final disposition of the specified felony indictment or
15 misdemeanor complaint.

16 (b) The constable shall notify the suspended employee in
17 writing that the person is being temporarily suspended for a
18 specific period, with or without pay, as applicable, and that the
19 temporary suspension is not intended to reflect an opinion on the
20 merits of the indictment or complaint.

21 (c) An employee indicted for a felony or officially charged
22 with the commission of a Class A or B misdemeanor who has also been
23 charged by the constable with a civil service rule violation
24 directly related to the indictment or complaint may delay the civil
25 service hearing for not more than 30 days after the date of the
26 final disposition of the indictment or complaint.

27 (d) If the constable temporarily suspends an employee under

1 this section and the employee is not found guilty as charged in the
2 indictment or complaint in a court of competent jurisdiction, the
3 employee may appeal to the commission for recovery of back pay. The
4 commission may:

5 (1) award all or part of the back pay; or

6 (2) modify or uphold the decision by the constable.

7 (e) Acquittal or dismissal of an indictment or a complaint
8 does not mean that an employee has not violated a civil service rule
9 and does not negate the charges that may have been or may be brought
10 against the employee by the constable.

11 (f) Conviction of a felony is cause for dismissal, and
12 conviction of a Class A or B misdemeanor may be cause for
13 disciplinary action or dismissal.

14 Sec. 158.108. AUTHORITY TO ISSUE SUBPOENAS AND ADMINISTER
15 OATHS. (a) In a proceeding before the commission under this
16 subchapter, the chair of the commission shall, on request of a
17 person described by Subsection (b):

18 (1) administer oaths; and

19 (2) issue subpoenas and subpoenas duces tecum for the
20 attendance of witnesses and for the production of documentary
21 material.

22 (b) The affected employee, the county attorney, or a
23 designee of the employee or the county attorney may request the
24 chair of the commission to subpoena any books, records, documents,
25 papers, accounts, or witnesses that the requestor considers
26 relevant to the case. The request must be made before the 10th day
27 before the date a commission proceeding will be held.

1 (c) An oath administered under this section has the same
2 force and effect as an oath administered by a magistrate in the
3 magistrate's judicial capacity.

4 (d) A response to a subpoena duces tecum under this section
5 is considered to have been made under oath.

6 (e) A person who is subpoenaed commits an offense if the
7 person fails to appear as required by the subpoena. An offense under
8 this section is a misdemeanor punishable by a fine up to \$1,000,
9 confinement in the county jail for not more than 30 days, or both
10 the fine and confinement.

11 Sec. 158.109. COMPENSATION AND STAFF. The members of the
12 commission serve without compensation, but the commissioners court
13 shall reimburse each member for actual and necessary expenses
14 incurred in performing the member's duties. The commissioners
15 court shall provide the commission with adequate office space and
16 sufficient funds to employ an adequate staff and to purchase
17 necessary supplies and equipment.

18 Sec. 158.110. APPEALS. (a) An employee who, on a final
19 decision by the commission, is demoted, suspended, or removed from
20 a position may appeal the decision by filing a petition in a
21 district court in the county within 30 days after the date of the
22 decision.

23 (b) An appeal under this section is under the substantial
24 evidence rule, and the judgment of the district court is appealable
25 as in other civil cases.

26 (c) If the district court renders judgment for the
27 petitioner, the court may order reinstatement of the employee,

1 payment of back pay, or other appropriate relief.

2 Sec. 158.111. REVIEW UNDER SUBSTANTIAL EVIDENCE RULE. (a)

3 The same standards described by Section 158.0121 apply to an appeal
4 under Section 158.110.

5 (b) The procedures for review under Section 158.110 are the
6 same as provided by Section 158.0122.

7 (c) The commission may require a party who appeals a
8 decision under Section 158.110 to pay the cost of preparing the
9 commission record in the same manner provided by Section 158.0123.

10 Sec. 158.112. EXEMPTIONS. (a) A person who is an employee
11 on the date that a civil service system is adopted under this
12 subchapter may not be required to take a competitive examination or
13 perform any other act under this subchapter to maintain the
14 person's employment.

15 (b) Each constable of a county may designate as exempt from
16 the civil service system:

17 (1) the position of chief deputy;

18 (2) four positions in the rank immediately under the
19 rank of chief deputy;

20 (3) one or more positions in the office of
21 departmental legal counsel; and

22 (4) additional positions in the department except that
23 the constable may not designate as exempt a total of more than 10
24 positions.

25 (c) At the time a new constable takes office, an employee
26 holding an exempt position may be transferred to the nonexempt
27 position held by the employee immediately before being promoted to

1 an exempt position. A person who was not an officer in the
2 department when appointed to an exempt position may be transferred
3 only to an entry level position in accordance with the system's
4 civil service rules.

5 Sec. 158.113. SYSTEM DISSOLUTION BY DEPARTMENT ELECTION.

6 (a) If, after a civil service system under this subchapter has been
7 in effect in a county for at least one year, at least 20 percent of
8 the employees in the county petition the county judge to dissolve
9 the system, the judge shall order an election on the question of the
10 dissolution of the civil service system.

11 (b) The county judge shall hold the election after the 15th
12 day but on or before the 45th day after the date the petition is
13 submitted. The election must be by secret ballot and each employee
14 is entitled to vote at the election.

15 (c) The ballots for the election shall be printed to provide
16 for voting for or against the proposition: "Dissolution of the
17 civil service system for all constable's department employees in
18 the county."

19 (d) The county judge shall canvass the votes and declare the
20 result.

21 (e) If the proposition is approved by a majority of the
22 employees voting at the election, the county judge shall declare
23 the civil service system dissolved.

24 Sec. 158.114. SYSTEM DISSOLUTION BY COUNTY ELECTION. (a)
25 After a civil service system under this subchapter has been in
26 effect in a county for at least one year, a person may file a
27 petition signed by at least 10 percent of the registered voters of

1 the county with the county judge for a countywide election on the
2 dissolution of the civil service system.

3 (b) On receipt of a petition described by Subsection (a),
4 the county judge shall order an election in the county on the
5 question of the dissolution of the civil service system to be held
6 in the county:

7 (1) on the next uniform election date that allows
8 sufficient time to comply with applicable provisions of law; or

9 (2) at a special election called for that purpose.

10 (c) The ballots for the election described by Subsection (b)
11 shall be printed to provide for voting for or against the
12 proposition: "Dissolution of the civil service system for all
13 constable's department employees in the county."

14 (d) If a majority of the voters voting at the election
15 described by Subsection (b) approve dissolution, the county judge
16 shall declare the civil service system dissolved.

17 Sec. 158.115. EXCLUSIVITY. A civil service system created
18 under this subchapter and in effect applies to employees and
19 departments to the exclusion of a civil service system in that
20 county created under Subchapter A or another law.

21 SECTION 2. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2019.