

By: Perez

H.B. No. 1217

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a constable's department civil service system in certain counties; creating a criminal 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 a department employee, including 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. In lieu of
12 establishment under Section 158.103, the commissioners court of a
13 county may by order create a civil service system for all employees
14 in the county.

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

21 (b) The members of the commission shall elect one of the
22 members as chair of the commission.

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

25 (d) The person who appointed a member of the commission
26 whose position becomes vacant shall appoint a person to serve the
27 unexpired part of the member's term.

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

- 3 (1) be at least 25 years old; and
4 (2) have resided in the county for the three years
5 immediately preceding the date on which the person's term will
6 begin.

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

- 9 (1) selection and classification of employees;
10 (2) competitive examinations;
11 (3) promotions, seniority, and tenure;
12 (4) layoffs and dismissals;
13 (5) disciplinary actions;
14 (6) grievance procedures;
15 (7) the rights of employees during an internal
16 investigation; and
17 (8) other matters relating to the selection of
18 employees and the procedural and substantive rights, advancement,
19 benefits, and working conditions of employees.

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

25 (c) A panel of three commissioners shall preside at the
26 hearing and vote on the commission's final decision in any case
27 involving termination, demotion, or recovery of back pay. A panel's

1 decision is the final decision of the commission for purposes of
2 Sections 158.107 and 158.110. The commission shall adopt rules
3 prescribing the commission's procedures for assigning members to a
4 panel. A panel may not include the member who was appointed to the
5 commission by a constable when the hearing involves an employee
6 from that constable's department.

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

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

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

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

1 final disposition of the indictment or complaint.

2 (d) If the constable temporarily suspends an employee under
3 this section and the employee is not found guilty as charged in the
4 indictment or complaint in a court of competent jurisdiction, the
5 employee may appeal to the commission for recovery of back pay. The
6 commission may:

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

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

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

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

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

20 (1) administer oaths; and

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

24 (b) The affected employee, the county attorney, or a
25 designee of the employee or the county attorney may request the
26 chair of the commission to subpoena any books, records, documents,
27 papers, accounts, or witnesses that the requestor considers

1 relevant to the case. The request must be made before the 10th day
2 before the date a commission proceeding will be held.

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

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

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

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

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

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

1 (c) If the district court renders judgment for the
2 petitioner, the court may order reinstatement of the employee,
3 payment of back pay, or other appropriate relief.

4 Sec. 158.111. REVIEW UNDER SUBSTANTIAL EVIDENCE RULE. (a)
5 The same standards described by Section 158.0121 apply to an appeal
6 under Section 158.110.

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

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

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

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

19 (1) the position of chief deputy;

20 (2) four positions in the rank immediately under the
21 rank of chief deputy;

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

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

27 (c) At the time a new constable takes office, an employee

1 holding an exempt position may be transferred to the nonexempt
2 position held by the employee immediately before being promoted to
3 an exempt position. A person who was not an officer in the
4 department when appointed to an exempt position may be transferred
5 only to an entry level position in accordance with the system's
6 civil service rules.

7 Sec. 158.113. SYSTEM DISSOLUTION BY DEPARTMENT ELECTION.

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

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

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

21 (d) The county judge shall canvass the votes and declare the
22 result.

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

26 Sec. 158.114. SYSTEM DISSOLUTION BY COUNTY ELECTION. (a)

27 After a civil service system under this subchapter has been in

1 effect in a county for at least one year, a person may file a
2 petition signed by at least 10 percent of the registered voters of
3 the county with the county judge for a countywide election on the
4 dissolution of the civil service system.

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

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

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

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

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

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

23 SECTION 2. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2021.